

**INDIANA EDUCATION EMPLOYMENT
RELATIONS BOARD**

ANNUAL REPORT

2002

THE HONORABLE FRANK O'BANNON

Governor of the State of Indiana

Members of the General Assembly

The Indiana Education Employment Relations Board presents its 30th annual report.

This report covers all official transactions of the agency under Public Law 217, Acts of 1973, as amended, for the calendar year 2002.

Handwritten signature of Dennis P. Neary in cursive script.

Dennis P. Neary, Chairman

Handwritten signature of John E. Lillich in cursive script.

John E. Lillich, Member

Handwritten signature of William E. Wendling, Jr. in cursive script.

William E. Wendling, Jr., Member

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INDIANA EDUCATION EMPLOYMENT RELATIONS BOARD

Dennis P. Neary, Chairman
John E. Lillich, Member
William E. Wendling, Jr., Member

ADMINISTRATIVE OPERATIONS

Dennis P. Neary, Chairman
Maureen R. Johnson, Administrative Assistant
Tammie E. Welker, Accountant
Lisa K. Day, Secretary

DIVISION OF EDUCATION EMPLOYMENT RELATIONS

Ivan Floyd, Labor Relations Specialist
Janet L. Land, Labor Relations Specialist
Vicki E. Martin, Labor Relations Specialist
Joseph A. Ransel, Jr., Labor Relations Specialist
K. Patrick Weinmann, Labor Relations Specialist
MaryAnn Stuart, Secretary

DIVISION RESEARCH

Joseph A. Ransel, Jr., Director
Jackqualine J. Fenton, Secretary
Intern

BOARD MEETING

DATE: Wednesday, August 22, 2001
TIME: 10:00 a.m.
PLACE: Indiana Government Center North, 100 North Senate Avenue, Room N 1045
Indianapolis, Indiana 46204-2220

MINUTES

Chairman Dennis P. Neary called the meeting to order at 10:00 a.m. Board Member John E. Lillich was present. There was no official court reporter for this meeting.

Member Lillich made a motion to approve the minutes of the meeting of December 12, 2000, as written. Chairman Neary seconded the motion. The minutes were approved.

IEERB Staff Member Ivan Floyd presented the following update on the litigation cases that are on appeal:

South Newton School Corporation:

From time to time this case has been alluded to at IEERB Board ("Board") meetings. It has come up in the context of our effort to follow the Board's opinion in this case throughout judicial review. The case is presently in the Indiana Supreme Court. It has been fully briefed and is awaiting the Supreme Court's ruling on the School Corporation's petition for transfer. The School Board's Association has filed an amicus curiae brief in support of the School Corporation and IEERB.

Whether the Board wins or loses in this case, its opinion herein will be remembered most for the unusual attention the Board Members afforded the case. First, the Chairman determined that the potential impact of the decision statewide was so great that the hearing on the merits should be conducted before the Board rather than before an administrative law judge under IC 4-21.5-3. This decision was made in spite of the fact that it shifted an undue procedural burden to the Board Members to conduct the evidentiary hearing. Next, the Board studied lengthy legal memoranda prepared in response to their specific questions which arose during the Board's discussion after the completion of the testimony at the initial public hearing.

The Board then held its second public hearing to further discuss the issues and to ultimately render its final determination. The Board ruled that the School Corporation could require teachers to make up any teacher workday which was originally coupled with a subsequently waived student instructional day. Finally, the Board Members personally reviewed and revised the draft opinion prior to its issuance to the parties and the public. [In years of substantial inclement weather, the Board's decision could potentially have an impact on the public school community in some locales.]

Marion Community Schools:

Although IEERB is not a party in this case, the Indiana Supreme Court, based upon the arguments advanced in IEERB's amicus curiae brief, granted the relief requested by IEERB. Specifically, the Supreme Court remanded the case to the Trial Court with instructions to refer the portion of the case dealing with the duty of fair representation to the IEERB for its decision. The Trial Court was ordered to render a determination on the portion of the case dealing with the Teachers' contract claim against the School Corporation. Finally, the Supreme Court ordered the Trial Court to stay all proceedings on the contract claim until the Trial Court received IEERB's decision on the fair representation claim. [Three teachers allege that as a result of the conduct of the School Corporation and the Association they lost approximately \$140,000 in early retirement benefits.]

IEERB Research Director Joseph A. Ransel, Jr., gave the following contract settlement reports: there are currently 296 settlements for the 2000-01 year, leaving 10 unsettled. Of the 286 contracts received by IEERB, the average without increment is 3.27%. Mr. Ransel also announced there are currently 93 settlements for the 2001-02 year, leaving 213 unsettled. Of the 43 contracts received by IEERB, the average without increment is 3.44%. Mr. Ransel broke down the settlements as follows: 38 multi-year contracts have an average without increment of 3.53%; 5 newly bargained contracts have an average without increment of 2.78%.

Chairman Neary announced that the purpose of this Board meeting was to readopt IEERB's rules, 560 IAC 2 General Provisions, in anticipation of IC 4-22-2.5-2, providing that all rules of the Indiana administrative agencies in force on December 31, 1995, expire on January 1, 2002, to be effective 30 days after filing with the secretary of state. IEERB did not receive any written comments or requests to separate any part of the rules regarding this readoption. Member Lillich made a motion to readopt 560 IAC 2 as written, Chairman Neary seconded the motion. The motion passed unanimously.

Chairman Neary thanks IEERB staff member Ivan Floyd for his work on the readoption of the rules.

Chairman Neary then announced the next board meeting would be December 5, 2001.

Being no further business, Member Lillich moved to adjourn the meeting. Chairman Neary seconded the motion. The meeting adjourned at 10:25 a.m.

Dennis P. Neary, Chairman

IEERB BOARD MEETING

DATE: Tuesday, February 26, 2002
TIME: 10:30 a.m.
PLACE: Indiana Government Center North, 100 North Senate Avenue, Room N 1045
Indianapolis, Indiana 46204-2220

AGENDA

1. Approval of minutes of August 22, 2001, meeting.
 2. Report of the Director of Research on the 2000-01 and 2001-02 negotiated settlement progress and state average.
 3. Report of IEERB Accountant on fiscal responsibility and how it relates to the budget.
 4. Report of IEERB Staff member on litigation.
 5. Hearing on the School Corporation's Exceptions to Hearing Examiner's Report in GOSHEN EDUCATION ASSOCIATION, et al., and BOARD OF SCHOOL TRUSTEES OF THE GOSHEN COMMUNITY SCHOOLS, Case No. U-00-03-2315.
 6. New business.
Adoption of IEERB Rules
 7. Public comment.
-

BOARD MEETING

DATE: Tuesday, February 26, 2002
TIME: 10:30 a.m.
PLACE: Indiana Government Center North, 100 North Senate Avenue, Room N 1045
Indianapolis, Indiana 46204-2220

MINUTES

Chairman Dennis P. Neary called the meeting to order at 10:30 a.m. Board Members John E. Lillich and William E. Wendling, Jr. were present. Helen Batuello of Allen Reporting Agency was sworn in as the official court reporter for this meeting.

Member Lillich made a motion to approve the minutes of the meeting of August 22, 2001, as submitted. Chairman Neary seconded the motion. The minutes were approved.

IEERB Research Director Joseph A. Ransel, Jr., gave the following contract settlement reports: There are currently 94 settlements for the 2001-02 year, leaving 218 unsettled. Of the 183 contracts received by IEERB, the average without increment is 2.86%; 5.61% with increment. Mr. Ransel also reported all school corporations are settled for the 2000-01 year.

IEERB Accountant, Tammie Welker, reported on IEERB's budget reductions, which were made pursuant to Governor Frank O'Bannon's directive that each agency must reduce its 2001-02 and 2002-03 budget by 7%. IEERB's 7% reduction in fiscal year 2001-02 was achieved

by adding the salary savings attributable to two vacant positions to the salary savings resulting from the temporary absence of two employees, who were on short-term disability. The 7% reduction in IEERB's 2002-03 budget will be effected by contracting for a lesser amount of ad hoc mediator services and by not making a certain defined expenditure from the PERB budget.

IEERB Staff Member Ivan Floyd presented the following update on the litigation cases:

Marion Community Schools:

The Indiana Supreme Court adopted the two contentions, which IEERB set forth in its amicus curiae brief, and remanded the case to the Trial Court with instructions to: (1) "refer the Teachers' fair representation claim to IEERB for a decision and (2) render a decision on the Teachers' contract claim." The IEERB hearing on the Teachers' fair representation claim was held on January 23, 2002. The parties are awaiting the transcript thereof. [3 teachers allege that as a result of the conduct of the School Corporation and the Association they lost approximately \$140,000 in early retirement benefits.]

Crawfordsville Community Schools:

There are two court cases regarding this one IEERB case. In the case involving the School Corporation versus IEERB, the Trial Court's opinion was in favor of IEERB and against the School Corporation. The School Corporation appealed. In the case involving the 3 teachers and the School Corporation, the Trial Court's opinion was in favor of the School Corporation and against the teachers. The teachers appealed. As of August 30, 2001, the case was fully briefed at the Court of Appeals. In December, 2001, the Court consolidated the two cases. [Refusal to discuss drug policy and interference with school employees in their 6(a) rights.]

South Newton School Corporation:

On December 4, 2002, the Trial Court decided in favor of the Teachers Association and against the School Corporation and IEERB. The School Corporation appealed. The Court of Appeals, in memorandum opinion, affirmed the Trial Court's decision holding for the Teachers Association and against the School Corporation and IEERB. The School Corporation petitioned for transfer to the Supreme Court. The case was fully briefed in October, 2001. The School Boards Association filed an amicus curiae brief in support of the School Corporation and IEERB. On February 15, 2002, the Supreme Court denied the School Corporation's petition for transfer. Pursuant to the Court of Appeals' and Trial Court's opinions, the case has been remanded to the IEERB for a hearing on the teachers' damage claims. [In years of substantial inclement weather, the Board's decision could potentially have an impact on the public school community in some locales.]

Chairman Neary thanked IEERB staff member Maureen Johnson for her work in preparing materials for the Board meetings.

Chairman Neary then announced the next tentative board meeting would be Tuesday, April 23, 2002.

Next, the Board heard the parties' oral arguments on the School Corporation's written exceptions to the Hearing Examiner's Report in Goshen Education Association, et al., and Board of School Trustees of the Goshen Community Schools, Case No. U-00-03-2315. Mr. William Davis, of Davis & Roose, represented the Board of School Trustees of the Goshen Community Schools; Mr. Richard Darko and Mr. Eric Hylton, of Lowe Gray Steele & Darko, represented the Goshen Education Association. Mr. Davis detailed his exceptions to the report to the Board. Mr. Darko then explained his reasoning as to why the Board should affirm the report in its

entirety. Following the oral argument, Board members discussed the matter among themselves. Finally, Member Wendling made the following motion:

To adopt the Hearing Examiner's Recommended Order numbered one, which ordered the School Corporation to cease and desist from refusing to bargain by taking unilateral action regarding the use of reinsurance reimbursements;

To adopt the Hearing Examiner's Recommended Order numbered two, which ordered the Respondent to rescind its action of using the reinsurance reimbursements to make three routine monthly premium payments.

The Board adopted the Hearing Examiner's Recommended Order numbered three, after having amended it slightly, to read as follows: To reasonably restore the status quo ante, the School Corporation is ordered to pay an amount of money equal to the amount of the three missed monthly premium payments plus interest. The evidence shows that the three missed payments were equal to approximately \$450,000. The money should be paid to the ISTA Insurance Trust in a manner which will benefit all teachers all employees as they make their contributions to the ISTA Insurance Trust. (Board deletions: all teachers; Board addition: all employees.)

The Board adopted Member Wendling's motion in a 3 to 0 vote. Implicit in Member Wendling's motion was the proposition that the Board would adopt the Hearing Examiner's Findings and Conclusions of Fact and his Conclusions of Law in their entirety.

Being no further business, Member Wendling moved to adjourn the meeting. Chairman Neary seconded the motion. The meeting adjourned at 12:25 p.m.

Dennis P. Neary, Chairman

IEERB BOARD MEETING

DATE: Tuesday, June 18, 2002
TIME: 10:30 a.m.
PLACE: Indiana Government Center North, 100 North Senate Avenue, Room N 1045
Indianapolis, Indiana 46204-2220

AGENDA

1. Approval of minutes of February 26, 2002, meeting.
 2. Report of the Director of Research on the 2001-02 negotiated settlement progress and state average.
 3. Report of IEERB Staff member on litigation.
 4. Hearing on the School Corporation's Exceptions to Hearing Officer's Report in GARY UNITED SUBSTITUTE TEACHERS ASSOCIATION and GARY COMMUNITY SCHOOL CORPORATION and GARY TEACHERS UNION, LOCAL NO. 4 AFT, AFL-CIO, Case No. R-01-02-4690.
 5. New business.
-

BOARD MEETING

DATE: Tuesday, June 18, 2002
TIME: 10:50 a.m.
PLACE: Indiana Government Center North, 100 North Senate Avenue, Room N 1045
Indianapolis, Indiana 46204-2220

MINUTES

Chairman Dennis P. Neary called the meeting to order at 10:50 a.m. Board Members John E. Lillich and William E. Wendling, Jr. were present. Helen Batuello of Allen Reporting Agency was sworn in as the official court reporter for this meeting.

Member Lillich made a motion to approve the minutes of the meeting of February 26, 2002, as written. Chairman Neary seconded the motion. The minutes were approved.

IEERB Staff Member Ivan Floyd presented the following update on the litigation cases:

Crawfordsville Community Schools:

There are two court cases regarding this IEERB case. In the case involving the School Corporation versus IEERB, the Trial Court's opinion was in favor of IEERB. The School Corporation appealed. In the case involving the three teachers and the School Corporation, the Trial Court's opinion was in favor of the School Corporation and against the teachers. The teachers appealed. As of August 30, 2001, the case was fully briefed at the Court of Appeals. In December, 2001, the Court consolidated the two cases. In March, 2002, the Court of Appeals affirmed the Trial Court's opinion. The teachers filed a Motion to Transfer to the Supreme Court. The Supreme Court heard the case in May, 2002, and has not yet rendered an opinion. [Refusal to discuss drug policy and interference with school employees in their 6(a) rights.]

Goshen Community School Corporation:

The Indiana State Teachers Association ("ISTA") filed this unfair practice to collect payments which should have been made towards the self-insurance fund, as opposed to the General Fund. The IEERB Board held for the ISTA. The School Corporation filed suit in court. The case began in the Superior Court, and a request for change of venue transferred the case to the Circuit Court. The Attorney General filed a Motion to Dismiss (over objections made by IEERB and the Governor's office). The motion is pending. [Failure to make three monthly payments to the self-insurance fund.]

Marion Community Schools:

The Indiana Supreme Court adopted the two contentions, which IEERB set forth in its amicus curiae brief, and remanded the case to the Trial Court with instructions to: (1) "refer the Teachers' fair representation claim to IEERB for a decision and (2) render a decision on the Teachers' contract claim." The IEERB hearing on the Teachers' fair representation claim was held on January 23, 2002. The parties are awaiting the transcript thereof. [3 teachers allege that as a result of the conduct of the School Corporation and the Association they lost approximately \$140,000 in early retirement benefits.]

IEERB Research Director Joseph A. Ransel, Jr., gave the following contract settlement reports: There are currently 258 settlements for the 2001-02 year, leaving 48 unsettled. Of the 235 contracts received by IEERB, the average without increment is 2.78%; 5.52% with increment. Mr. Ransel reported there are currently 86 settlements for the 2002-03 year, leaving 220 unsettled. Of the 69 contracts received, the average without increment is 2.59% and 5.35% with increment.

Next, the Board heard the parties' oral arguments on the School Corporation's written exceptions to the Hearing Officer's Report in Gary United Substitute Teachers Association and Gary Community School Corporation and Gary Teachers Union, Local No. 4 AFT, AFL-CIO, Case No. R-01-02-4690. Gilbert King represented the Gary Community School Corporation ("School Corporation"); Elizabeth Quinn represented the Gary United Substitute Teachers Association ("GUSTA"); and Sandra Irons represented the Gary Teachers Union, Local No. 4 AFT, AFL-CIO ("Union"). The issue before the Hearing Officer was whether any or all of the substitute teachers are school employees as defined by the Act; and if any or all of the substitute teachers are school employees, should they be placed into the present bargaining unit represented by the Union, or in a separate unit. The Hearing Officer, in his written opinion, recommended that cluster substitute teachers and substitute teachers on long term assignments be included in the existing bargaining unit. The Hearing Officer further recommended that the reference to "permanent substitute assignment" in the existing unit description be removed, and suggested adding "cluster substitute teachers, and substitute teachers on long term assignments" in place of the other language. Mr. King argued the substitute teachers have no contract, and thus, cannot be considered "certificated employees" under the Act. Ms. Quinn argued they do have a contract, and to work for the School Corporation, the substitute teachers must possess a license. Therefore, the substitute teachers do qualify as "certificated employees." After Mr. King and Ms. Quinn concluded their oral arguments, the Board presented the parties with questions. Ms. Irons assisted in answering some of these questions pertaining to specific details as to how substitute teachers are paid.

Member Wendling made a motion to adopt the Hearing Officer's Report in its entirety; Member Lillich seconded that motion. After discussion among the Board, including further

input from counsel, the Board members voted unanimously to adopt the Hearing Officer's Report in its entirety.

Chairman Neary announced there is no tentative board meeting at this time.

There being no further business, Member Lillich made a motion to adjourn the meeting. Chairman Neary seconded the motion and the meeting adjourned at 12:20 p.m.

Dennis P. Neary, Chairman

IEERB BOARD MEETING

DATE: Thursday, November 14, 2002
TIME: 1:00 p.m. or 2:00 p.m. (See below for specific time for specific case)
PLACE: Indiana Government Center North, 100 North Senate Avenue, Room N 1045
Indianapolis, Indiana 46204-2220

AGENDA

1. Approval of minutes of June 18, 2002, meeting.
 2. Report of the Director of Research on both the 2001-02 and 2002-03 negotiated settlement progress and state average.
 3. Report of IEERB Staff member on litigation.
 4. At 1:00 p.m., consideration of Motion for Interlocutory Order filed by Complainants, in EAST CHICAGO FEDERATION OF TEACHERS, LOCAL 511, AFT and JOSE L. MEJIA, President, and BOARD OF SCHOOL TRUSTEES, SCHOOL CITY OF EAST CHICAGO, Case No. U-02-10-4670.
 5. At 2:00 p.m., consideration of Request for Emergency Relief filed by Petitioners, in SOUTH ADAMS CLASSROOM TEACHERS ASSOCIATION and STEVE TATMAN and SOUTH ADAMS SCHOOLS, Case No. U-02-18-0035.
 6. New business.
-

UNIT DETERMINATION AND REPRESENTATION

Seven unit determination and representation cases were filed with the IEERB during the calendar year 2002. Two elections were conducted by the IEERB in 2002.

UNIT DETERMINATION AND REPRESENTATION TABLE

SCHOOL CORPORATION	CASE NUMBER	COUNTY	DISPOSITION
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2002 UNIT DETERMINATION AND REPRESENTATION CASES

1. Crawfordsville	R-01-07-5855	Montgomery	Acknowledgment Exclusive Rep / Withdrawn
2. Gary	R-01-02-4690	Lake	H O Report/ BD Order / Withdrawn
3. Nea-Union	R-01-05-7950	Union	Acknowledgment of Unit / Withdrawn
4. North Vermillion	R-02-05-8010	Vermillion	Acknowledgment of Unit / Withdrawn
5. Rush	R-02-02-6995	Rush	Election Cert./ Excl. Rep. / Withdrawn
6. South Newton	R-01-06-5995	Newton	Election Cert./ Excl. Rep. / Withdrawn
7. Switzerland	R-02-03-7775	Switzerland	Acknowledgment of Unit / Withdrawn

June 21, 2002

Dale Petrie, President
Board of School Trustees
Crawfordsville Community Schools
1000 Fairview Ave
Crawfordsville IN 47933

Steve Frees, President
Crawfordsville Education Association
C/O Crawfordsville Community Schools
1000 Fairview Ave
Crawfordsville IN 47933

Re: Case No. R-01-07-5855
Crawfordsville Community Schools
and Crawfordsville Education Association

Dear Mr. Frees and Mr. Petrie:

The Indiana Education Employment Relations Board is in receipt of your request for recognition of the Crawfordsville Education Association ("Association") as the exclusive representative of the certificated employees of the Crawfordsville Community Schools ("School Corporation").

On September 25, 2001, the Association presented evidence to the School Corporation that demonstrated the Association represented a majority of the School Corporation's school employees. The School Corporation then posted in each of its school buildings for thirty days a notice of its intent to recognize the Association to serve as its school employees' exclusive representative.

During that thirty-day posting period, no other school employee organization filed written objections to such recognition with the School Corporation or with the Indiana Education Employment Relations Board ("Board"). Pursuant to Indiana Code 20-7.5-1-10(b) and 560 Indiana Administrative Code 2-2-2, the School Corporation voted to recognize the Association as the exclusive representative of its school employees. No school employee filed a complaint concerning the composition of the bargaining unit with either the School Corporation or the Board pursuant to Indiana Code 20-7.5-1-10(a)(2) and (b) and pursuant to 560 Indiana Administrative Code 2-2-1(b).

The School Corporation and the Association have complied with the provisions set forth in Indiana Code 20-7.5-1-10 and 560 Indiana Administrative Code 2-2-1 and 2. Thereby, the Board certifies the Association as the exclusive representative of the school employees.

Sincerely,
Dennis P. Neary, Chairman

**BEFORE THE INDIANA EDUCATION
EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF:

GARY UNITED SUBSTITUTE TEACHERS)	
ASSOCIATION,)	
)	
Petitioner,)	
)	
and	)	Case No. R-01-02-4690
)	
GARY COMMUNITY SCHOOL CORPORATION,)	
)	
School Employer,)	
)	
and)	
)	
GARY TEACHERS UNION, LOCAL NO. 4)	
AFT, AFL-CIO,)	
)	
School Employee Organization.)	

UNIT CLARIFICATION
HEARING OFFICER'S REPORT

Pursuant to the petition in the above-entitled case, upon the basis of evidence adduced at a hearing held in Gary, Indiana, on September 24 and October 15, 2001, upon evidence acquired by off-the-record investigation and by official notice, upon consideration of the post-hearing papers submitted by the parties, and upon consideration of the applicable law, the Hearing Officer now submits this report.

FINDINGS AND CONCLUSIONS

1. The petitioner Gary United Substitute Teacher's Association ("GUSTA") filed a petition herein on February 5, 2001, requesting that it be recognized as the exclusive representative of certain school employees of the Gary Community School Corporation ("school employer"). GUSTA subsequently modified its position, requesting that the said school employees ("substitute teachers") be included in the bargaining unit of school employees presently represented by the intervenor, Gary Teachers Union, Local No. 4, AFL-CIO ("Union").
2. The Gary Community School Corporation, at all times material, was a "school employer," as that term is defined by Section 2(c) of Indiana Code 20-7.5-1 ("Act").

3. At all times material, the Union was a “school employee organization,” as that term is defined by Section 2(k) of the Act.
4. The Union, at all times material, was the exclusive representative of school employees employed by the school employer, as the terms “exclusive representative” and “school employee” are defined by Section 2(l) and 2(e) of the Act.
5. There is presently one unit of school employees employed by the school employer, and it is represented by the Union. Such unit is described in the current status quo collective bargaining agreement between the school employer and the Union as follows:

[A]ll classroom teachers, librarians, social workers, nurses, guidance counselors, and anyone on permanent substitute assignment in any of the named positions.
6. Ermalene Gault, who signed the unit clarification petition herein under oath as president of GUSTA, was a “building substitute” teacher employed by the school employer at the time the petition was filed. She is presently a “cluster substitute” teacher employed by the school employer. (Off-the-record investigative finding by the Hearing Officer).
7. All substitute teachers employed by the school employer are licensed by the Indiana Professional Standards Board.
8. There is no evidence that any of the substitute teachers employed by the school employer has entered into a fully integrated signed contractual employment instrument with the school employer.
9. The duties and obligations of substitute teachers and the school employer with respect to the employment of the substitute teachers are governed by a document entitled “The Substitute Teacher’s Handbook.” The said handbook sets forth in great detail the hours of work, work requirements, working conditions, and compensation involved in performing the job of substitute teacher. The handbook explicitly requires a substitute teacher to be licensed by the Indiana Professional Standards Board.
10. All substitute teachers are required to adhere to the provisions of the said handbook, and the evidence is that all substitute teachers in fact perform their work and are paid in accordance therewith.
11. The said handbook explicitly states that it (the handbook) is not a contract for employment, and further states that the relationship between the school employer and the substitute teachers is employment at will.
12. Substitute teachers are required annually to sign a form detailing their licensing, subject preferences, and availability for substitute teaching in the ensuing school year.

13. The rights of substitute teachers are presently recognized under the Act in the collective bargaining agreement between the Fort Wayne Community Schools and the Fort Wayne Education Association. (Official notice taken of Indiana Education Employment Relations Board (“IEERB”) records).
14. No school employer in Indiana deals with more than one bargaining unit of school employees. (Official notice taken of IEERB records).
15. No school employer in Indiana deals with more than one exclusive representative of its school employees. (Official notice taken of IEERB records).
16. For the purposes of this case, it is helpful to place the substitute teachers in three categories, as follows:
 - (a) Day-to-day substitutes;
 - (b) Cluster substitutes (essentially the same as the employees known as building substitutes in 2000-01); and
 - (c) Long term assignment (“LTA”) substitutes.
17. Day-to-day substitutes are called to substitute teach as needed. A day-to-day substitute may or may not be called on a given school day. A day-to-day substitute has no obligation to accept an assignment. A day-to-day substitute may be called to teach, over time, a variety of subjects and grade levels. A day-to-day substitute may be called to teach, over time, at several different school locations.
18. Cluster substitutes are thirty-nine teachers who are required to report to one of three different school locations (thirteen at each school) every school day. A cluster substitute is then assigned to teach in one of several schools in his or her geographical “cluster” of schools. A cluster substitute may teach different subjects and grade levels at different school locations from one day to the next. The cluster substitutes replace forty-five “building substitutes,” each of whom, in 2000-01, reported every school day to his or her assigned school building to receive his or her teaching assignment, which was generally in the building reported to. The building substitutes reported to fifteen different school buildings.
19. LTA substitutes either: (1) replace a specific regular teacher who is on a leave of absence for more than fifteen days, or (2) fill a vacant teaching position (a position for which no regular teacher has been hired). LTA substitutes are required to assume the duties of a regular teacher on every school day.
20. The words, “anyone on permanent substitute assignment in any of the named positions,” which appear in the description of the unit of school employees represented by the Union, are no longer used by the school employer and the Union to describe persons in the unit. Such terminology probably refers to persons who once held positions similar to the positions now occupied by LTA substitutes.

21. The issues presented by the petition in this case are:

- (a) Whether any or all of the substitute teachers are school employees as defined by the Act; and
- (b) If any or all of the substitute teachers are school employees, should they be placed in the present bargaining unit represented by the Union, or in a separate unit.

DISCUSSION

Prior to the hearing, the school employer filed its “Employer’s Motion to Dismiss and/or to Make a More Definite Statement,” seeking to dismiss the petition for unit clarification herein on the ground that the IEERB does not have jurisdiction because GUSTA did not have standing to file the petition. Under Section 10(a)(2) of the Act, “. . . if any school employee in the proposed unit files a complaint to such unit with the [IEERB], the [IEERB] shall determine the proper unit.” The Rules of the IEERB allow the filing of a unit clarification petition by a school employee or by a school employee organization. 560 IAC 2-2-3(a).

The petitioner, GUSTA, is a “school employee organization,” Act, Section 2(k), in that it represents “school employees” in dealing with their school employer. GUSTA represents substitute teachers, including LTA substitutes and cluster substitutes, and represented building substitutes at the time it filed the petition. LTA, cluster, and building substitutes are “school employees,” as later explicated. Furthermore, Ermalene Gault, a school employee, signed the verified petition and can properly be said to have filed it. Either GUSTA, a school employee organization or Gault, a school employee, or both, filed the petition, thereby complying with the Act and the IEERB Rules. The aforesaid motion is therefore OVERRULED.

We come now to the merits. According to Section 10(a) of the Act, exclusive representatives serve for “school employees” within bargaining units. In order to qualify as a “school employee,” a person must be both “certificated” and “full-time.” Act, Section 2(e).

A “certificated” employee is a person whose contract with his or her school corporation requires the person to hold a license or permit from the Indiana Professional Standards Board. Act, Section 2(f); Indiana Code Section 20-6.1-3-1.5. In Indiana, a person may not serve as a substitute teacher without a license issued by the Professional Standards Board. Indiana Code Section 20-6.1-3-2. The undisputed evidence in this case is that all substitute teachers employed by the Gary Community School Corporation possess such substitute teacher licenses.

The school employer herein contends that although the substitute teachers are duly licensed, they are not “certificated employees” because they do not have “contracts” with the school corporations requiring licenses. It is true that the substitute teachers have not executed explicit integrated contractual documents of employment with the school corporation. However, there is no question but that those teachers and the corporation have an existing contractual relationship involving, inter alia, hours of work, work requirements, working conditions, licensing requirements, and compensation. The terms of that relationship are spelled out in the substitute teacher’s handbook. The handbook also contains the offer of employment and the way in which the offer is to be accepted, as well as fully stating the consideration flowing from both

sides. If, as the handbook states, the relationship is that of employment at will, that relationship presupposes a contract of employment. *See Orr v. Westminster Village North, Inc.*, 698 N.E.2d 712 (Ind. Sup. Ct. 1997) (case involving an employee handbook). In the instant case, the handbook which details the contractual terms and conditions of employment requires substitute licenses. Thus the contract of employment requires each substitute teacher to hold a license. And therefore it is concluded that the substitute teachers are “certificated employees.”

The school employer further contends that the substitute teachers are not full-time employees, and thus do not meet the Act’s definition of “school employees.” With respect to day-to-day substitutes, who may not be called to work every school day (and who may decline even when called), the employer is correct. The LTA substitutes, cluster substitutes, and building substitutes (in 2000-01), however, are clearly full-time in that they are required to report to a school building every day to teach. Nonetheless, on its behalf, the employer cites a hearing officer’s decision in Kokomo, 1973-74 IEERB Ann. Rep. 68 (1973), and specifically the third part of its four part test, which reads as follows: “The employee must have a regular assignment to a particular school, or schools, to fill a particular job.” 1973-74 IEERB Ann. Rep. at 77. The Kokomo decision concerned kindergarten and other teachers who taught less than a full day. It did not address the situation here involving employees who may teach several subjects and grade levels, and who may work at different locations and replace different teachers. With respect to the substitute teachers in this case, the third part of the Kokomo test is dicta, inapplicable here. The wording covers the Kokomo facts, but cannot be said to have considered facts such as those that exist in this case. And even if such wording governs here, the reasonable application of it would be that the LTA substitutes, building substitutes (in 2000-01), and cluster substitutes in fact have regular assignments to particular schools to perform particular jobs, to-wit: to teach students, exactly the same jobs as regular teachers on regular teachers’ contracts. It is therefore concluded that the LTA substitutes and the cluster substitutes are school employees within the meaning of the Act.

Having ascertained that the LTA and cluster substitutes are school employees, the question remains as to whether they should be included in the bargaining unit presently represented by the Union, or in their own separate unit. Section 10(a)(2) of the Act states that the determination of the proper unit shall be based on, among other things, the following considerations:

- (i) efficient administration of school operations;
- (ii) the existence of a community of interest among school employees;
- (iii) the effects on the school corporation and school employees of fragmentation of units; and
- (iv) recommendations of the parties involved.

Certainly considerations (i) and (iii) favor a single unit, and GUSTA’s recommendation is that the affected substitute teachers be placed in the existing unit represented by the Union. There are no school employers in Indiana required to deal with more than one unit of school employees. And the rights of substitute teachers in the Fort Wayne Community Schools are enumerated in the same collective bargaining agreement that covers regular teachers. No evidence was presented regarding the “community of interest” consideration. It must be concluded that, insofar as is presently ascertainable, the LTA and cluster substitute teachers

should be included in the existing bargaining unit of school employees represented by the Union. If a lack of “community of interest” should become apparent in practice, the school employer, a school employee organization, or a school employee or employees may seek a change in a future unit clarification proceeding. *See* 560 IAC 2-2-1-(c).

It is probable that the language in the existing unit description reading: “anyone on permanent substitute assignment. . . .,” describes employees who were forerunners of the present LTA substitute teachers. Because the LTA substitutes have been placed in the new unit recommended herein, there is no reason to retain the language referring to persons on permanent substitute assignment.

RECOMMENDATION

The Hearing Officer recommends that cluster substitute teachers and substitute teachers on long term assignments be included in the existing bargaining unit represented by the Union. The Hearing Officer further recommends that the reference to “permanent substitute assignment” in the existing unit description be removed.

THE UNIT

The recommended appropriate unit is:

All classroom teachers, librarians, social workers, nurses, guidance counselors, cluster substitute teachers, and substitute teachers on long term assignments.

Dated this 11th day of February, 2002.

Joseph A. Ransel, Jr.
Hearing Officer

**BEFORE THE INDIANA EDUCATION
EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF:

GARY UNITED SUBSTITUTE TEACHERS)	
ASSOCIATION,)	
)	
Petitioner,)	
)	
and	)	Case No. R-01-02-4690
)	
GARY COMMUNITY SCHOOL CORPORATION,)	
)	
School Employer,)	
)	
and)	
)	
GARY TEACHERS UNION, LOCAL NO. 4)	
AFT, AFL-CIO,)	
)	
School Employee Organization.)	

BOARD ORDER

The School Employer, Gary Community School Corporation, by counsel, filed exceptions to the Hearing Officer's Report in the above-captioned case. The Board, having considered the Hearing Officer's Report, the briefs submitted by the parties, the oral arguments of counsel, and the Board's discussion, hereby ADOPTS the Hearing Officer's Report in its entirety.

Dated this 19th day of June, 2002.

Dennis P. Neary, Chairman

John E. Lillich, Member

William E. Wendling, Jr., Member

IN THE MATTER OF:

Case Number: R-01-05-7950

20

6. Article II, Section A of the parties' collective bargaining agreement states:
- Association Recognition. The [Corporation] recognizes the NEA-Union County as the exclusive bargaining representative for all certificated contractual employees of the [Corporation] for the duration of the Agreement, except the Superintendent of Schools, Principals or Assistant Principals, Administrative Assistants and Athletic Directors who have no teaching responsibilities.
7. Initially, the position in question was titled technology coordinator and historically had been both included and excluded from the bargaining unit. In August 1998, the Corporation employed Sharon Moore as the technology coordinator which was considered outside of the bargaining unit. Early in the 1998-99 school year Moore requested that the Corporation consider the position to be a part of the teacher bargaining unit. The Association and the Corporation agreed to make the position of technology coordinator a part of the bargaining unit.
8. In August 2000, Moore took a leave of absence from her position as technology coordinator and subsequently resigned in April 2001.
9. At one time during the 2000-01 school year, a non-certificated employee occupied the position but was summarily dismissed at some point during the summer of 2001.
10. Near the end of June or the first of July 2001, the superintendent contacted the Association president to inform her that the school board preferred that the position of technology coordinator be administrative due to issues of confidentiality such as access to everyone's e-mail codes, personal messages, etc.
11. The Association president a short time later informed the superintendent that a job description was needed before further consideration could be taken in regard to the technology coordinator position.
12. Mid-July 2001, the Association president and the superintendent exchanged several e-mail messages concerning the position of technology coordinator. On or about July 18, 2001, the superintendent produced the first proposed job description. More e-mail messages were exchanged concerning the position and whether it should or should not be in the bargaining unit.
13. On or about August 3, 2001, the superintendent e-mailed the Association president that the position would be posted and attached a final job description for Manager of Information Technology ["MIT"].
14. The qualifications for the MIT were posted as follows:
- Indiana Teaching License with K-12 Computer Science Endorsement or Bachelor Degree in Computer Science are desirable.
 - Classroom experience desirable.

15. The MIT would report to the Corporation's superintendent. In addition, the MIT's responsibility was posted as:

To serve all personnel in the Union County/College Corner Joint School District as the leader in effectively integrating technology into the curriculum in the Union County/College Corner Joint School District.

16. The features salient to determining whether the MIT should be included or excluded from the bargaining unit are as follows:
- To develop, implement, and evaluate a corporation plan for providing training, seminars, and workshops to teachers, administrators, and support staff.
 - To serve as the committee chairperson for the Corporation Technology Committee. This would include writing and revision of computer curriculum and a five-year tech plan.
 - To supervise and direct building technology support personnel in their work.
 - Along with central office, building administrators, teachers, and technology committees, to maintain and revise computer curriculum and technology integration strategies for each building.
 - To assist the building staff, administrators, and central office in the development of long-term instructional goals, which incorporate technology into the curriculum.
 - To ensure and maintain appropriate confidentiality among the following areas ([T]his is not an inclusive list[.]): electronic records, payroll information, health information, student and personnel records, and other sensitive information data or material as it relates to technology.
 - To serve as an advisor to the Board and/or administrators in the areas of computer technology, voice communications, telecommunications, video distribution, and other technology as it becomes available.
 - To attend the monthly administrative meetings with central office personnel and building administrators and corporation committees that are working on goals for the use of Audio Visual and computer technology.
17. On or about August 14, 2001, Moore was hired under a 240-day contract at a salary of \$48,720 and with a benefit package as approved for all administrators.

ISSUES

I.

Is the MIT a “certificated employee” under the Act?

II.

Is the MIT a “school employee” who should be included in the composition of the teacher bargaining unit?

DISCUSSION

I.

To establish jurisdiction under the Act, one must first determine whether the MIT is a “certificated employee.” Section 2(f) of the Act defines a “certificated employee” as:

. . . a person whose contract with the school corporation requires that he hold a license or permit from the state board of education or a commission thereof as provided in IC 20-6.1.

In ascertaining whether an employee is “certificated,” the court of appeals in Maconaquah v. IEERB, 497 N.E.2d 1084, 1087 (Ind. Ct. App. 1986) concluded that the proper inquiry was “whether the school corporation in its contract with the employee require[d] a license or permit from the State Board of Education for the position.” Furthermore, while the State Board of Education is responsible for licensing teachers and is authorized to determine the kind of license for each position, the local school corporations must hire people who hold the appropriate license for the position for which they are hired. Accordingly, no statute precludes school corporations from imposing higher hiring standards than those imposed by the State Board of Education. The court of appeals finally concluded:

If a school corporation exercises this option and contractually requires a state license for a particular position, although the State Board of Education does not, the licensed individual holding the position is a ‘certificated employee’

In accordance with the facts in this case, the Hearing Officer finds that the MIT is a “certificated employee.” Even though the State Board of Education requires no license for the position of MIT, the Corporation required that applicants hold a valid Indiana teaching license with kindergarten through grade 12 computer science endorsement or a bachelor’s degree in computer science. Since the Corporation contractually required the MIT to hold a state license, the licensed MIT who occupies that position is a “certificated employee” under the Act according to the test established in Manonaquah.

II.

Having found that the MIT is a “certificated employee” under the Act, the next question to be satisfied is whether the MIT is a “school employee” for purposes of collective bargaining under the Act. A “school employee” is described in Section 2(e) of the Act as:

any full-time certificated person in the employment of the school employer. A school employee shall be considered full-time even though the employee does not work during school vacation periods, and accordingly works less than a full year. There shall be excluded from the meaning of school employee supervisors, confidential employees, employees performing security work and non-certificated employees. (emphasis added)

Section 2(e) of the Act clearly excludes “supervisors” from the definition of “school employee.” Under Section 2(h) of the Act, a “supervisor” is:

any individual who has:

- (1) authority, acting for the school corporation, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline school employees;
- (2) responsibility to direct school employees and adjust their grievances; or
- (3) responsibility to effectively recommend the action described in subsections (1) through (2);

that is not of a merely routine or clerical nature but requires the use of independent judgment. The term includes superintendents, assistant superintendents, business managers and supervisors, directors with school corporation-wide responsibilities, principals and vice-principals, and department heads who have responsibility for evaluating teachers. (emphasis added)

In the present case, the MIT is first responsible for the development, implementation, and evaluation of a corporate-wide technology program for teachers, administrators, and support staff. Second, the MIT will serve as the chairperson for the Corporation Technology Committee. Third, the MIT will supervise and direct building technology support personnel in their work. Fourth, the MIT, along with the central office, building administrators, teachers, and technology committees, is to maintain and revise computer curriculum and technology integration strategies for each building. Fifth, the MIT will assist the building staff, administrators, and central office in the development of long-term instructional goals, which incorporate technology into the curriculum. Sixth, the MIT will serve as an advisor to the school board and administrators in areas of computer technology. Finally, the MIT must attend the monthly administrative meetings with central office personnel and building administrators and corporation committees that are working on computer technology goals. Moreover, the MIT reports directly to the superintendent. For these reasons, the MIT meets the criteria set forth in Section 2(h) of the Act by performing supervisory duties and possessing corporate-wide management responsibilities.

Also excluded from the meaning of “school employee” is that of “confidential employees.” According to Section 2(I) of the Act,

‘[c]onfidential employee’ means a school employee whose unrestricted access to confidential personnel files or whose functional responsibilities or knowledge in connection with the issues involved in dealings between the school corporation and its employees would make the confidential employee’s membership in a school employee organization incompatible with the employee’s official duties.

Especially significant to the MIT’s job description is the requirement of ensuring and maintaining confidentiality among diverse areas. Those areas not necessarily inclusive are to consist of electronic records, payroll information, health information, student and personnel records, and any other sensitive data as that would pertain to technology. This could also involve the collection of data for purposes of collective bargaining. Consequently, the MIT’s membership in a school employee organization would be incompatible with the employee’s official duties.

Since the MIT is a “supervisor” and “confidential employee,” the individual who occupies the position of the MIT cannot as a matter of law be a “school employee” for inclusion in the teacher bargaining unit for purposes of collective bargaining. The position of MIT must, therefore, be excluded from the teacher bargaining unit.

HEARING OFFICER’S RECOMMENDATION

The Manager of Information Technology position should be excluded from the Corporation’s teacher bargaining unit.

THE UNIT

The recommended appropriate unit is:

. . . all certificated contractual employees . . . , except the Superintendent of Schools, Principals or Assistant Principals, Administrative Assistants, Athletic Directors who have no teaching responsibilities, and the Manager of Information Technology.

Issued this 14th day of February, 2002.

Janet L. Land
Hearing Officer

October 15, 2002

Mr. Paul Roads, Superintendent
North Vermillion Community School Corporation
5551 North Falcon Drive
Cayuga IN 47928

Mr. Jeffrey Keyes, President
North Vermillion Classroom Teachers Association
5551 North Falcon Drive
Cayuga IN 47928

Re: Case No. R-02-05-8010
North Vermillion Community School Corporation

Gentlemen:

The IEERB has received your joint letter and a copy of the September 5, 2002 posting, reflecting an amendment to the bargaining unit represented by the North Vermillion Classroom Teachers Association.

Judging from the letter and posting, it appears that all required procedures prescribed by Indiana Code 20-7.5-1-10(a) and 560 Indiana Administrative Code 2-2-1(c) have been complied with. No school employee complaints concerning the proposed amendment to the bargaining unit appear to have been filed during the thirty day posting period. Therefore, the IEERB acknowledges the amended bargaining unit described as follows:

Certificated contractual employees of the Board, except the Superintendent, the Principals, Assistant Principals, Athletic Director, Head Basketball Coach, Head Football Coach, Alternative School Director and Corporation Technology Coordinator.

Nothing further remains to be done.

Sincerely yours,

Joseph A. Ransel, Jr.
Hearing Officer

**BEFORE THE INDIANA EDUCATION
EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF:

RUSH COUNTY SCHOOLS,)	
)	
School Corporation)	
)	
and)	
)	
RUSHVILLE UNITED TEACHERS)	
ASSOCIATION,	)	Case Number R-02-02-6995
)	
Petitioner)	
)	
and)	
)	
RUSH COUNTY SCHOOLS CLASSROOM)	
TEACHERS ASSOCIATION,)	
)	
Incumbent)	

CERTIFICATION OF EXCLUSIVE REPRESENTATIVE

To determine which party would represent the school employees' bargaining unit for purposes of collective bargaining, the Indiana Education Employment Relations Board conducted an election on Tuesday, April 23, 2002. The election results reveal that a majority of the school employees cast their votes for the Rush County Schools Classroom Teachers Association.

Therefore, for collective bargaining purposes, discussion, and all other purposes under the Certificated Educational Employee Bargaining Act, IC 20-7.5-1 et seq., the Indiana Education Employment Relations Board in accordance with IC 20-7.5-1-9 and 10 now **CERTIFIES** the

RUSH COUNTY SCHOOLS CLASSROOM TEACHERS ASSOCIATION

as the exclusive representative of the school employees of Rush County Schools.

Specifically, the school employees' bargaining unit in Rush County Schools consists of all certificated employees except:

Superintendent; Assistant Superintendent; Principals and Assistant Principals; Directors with Corporate-Wide Responsibilities; Coordinators with Corporate-Wide Responsibilities; Attendance Officer; High School Athletic Director; "Supervisor" Positions subsequently created by the school employer as that term is defined in Indiana Acts 1973, PL #217; all certificated employees appointed by the school employer to a full-time "Acting" capacity in any of the above supervisor positions; Part-Time Employees; Non-Certified Employees; Head Football Coach.

Dated this 29th day of April, 2002.

Dennis P. Neary, Chairman
Indiana Education Employment Relations Board

**BEFORE THE INDIANA EDUCATION
EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF:

SOUTH NEWTON FACULTY ORGANIZATION,)	
)	
and	)	Case No. R-01-06-5995
)	
SOUTH NEWTON CLASSROOM TEACHERS)	
ASSOCIATION,)	
)	
School Employee Organization,)	
)	
and)	
)	
SOUTH NEWTON SCHOOL CORPORATION,)	
)	
School Employer.)	

CERTIFICATION OF EXCLUSIVE REPRESENTATIVE

In order to determine which school employee organization would represent the school employees' bargaining unit for purposes of collective bargaining and discussion, the Indiana Education Employment Relations Board conducted an election on Wednesday, February 13, 2002. The election results reveal that a majority of the school employees cast their votes for the South Newton Faculty Organization.

Therefore, for collective bargaining purposes, discussion, and all other purposes under the Certificated Educational Employee Bargaining Act, IC 20-7.5-1 et seq., the Indiana Education Employment Relations Board, in accordance with IC 20-7.5-1-9 and 10, now **CERTIFIES** the

SOUTH NEWTON FACULTY ORGANIZATION

as the exclusive representative of the school employees of South Newton Community School Corporation.

Specifically, the school employees' bargaining unit in the South Newton Community School Corporation consists of :

All School Employees, excluding the following: Superintendent, Assistant Superintendent, Principals, Assistant Principals, Director of Secondary Education, Director of Elementary Education, Director of Curriculum, Administrative Assistants, Athletic Director, Title I-GT Coordinator, Nurses, Substitute Teachers, Instructional Assistants, and Transportation Director.

Dated this 25th day of February, 2002.

Dennis P. Neary, Chairman
Indiana Education Employment Relations Board

May 16, 2002

Mr. Tracy Caddell, Superintendent
Switzerland County School Corporation
305 W Seminary St
Vevay IN 47043

Mrs. Sara Pavey, President
Switzerland County Classroom
Teachers Association
305 W Seminary St
Vevay IN 47043

Re: Switzerland County School Corporation
Case No. R-02-03-7775

Dear Mrs. Pavey and Mr. Caddell:

The IEERB has received your joint letter and a copy of the February 21, 2002 posting, reflecting an amendment to the bargaining unit represented by the Switzerland County Classroom Teachers Association.

Judging from the letter and posting, it appears that all required procedures prescribed by Indiana Code 20-7.5-1-10(a) and 560 Indiana Administrative Code 2-2-1(c) have been complied with. No school employee complaints concerning the proposed amendment to the bargaining unit appear to have been filed during the thirty day posting period. Therefore, the IEERB acknowledges the amended bargaining unit described as follows:

All full time certificated personnel as defined by said law (Public Law 217) except the Superintendent of Schools, High School Principal, Middle School Principal, Elementary School Principal(s), Assistant Principal(s), all Acting Principal-Teacher positions, Attendance Officer, Technology Director, or other supervisory or confidential employees as defined in Public Law 217.

Nothing further remains to be done.

Sincerely yours,

Joseph A. Ransel, Jr.
Hearing Officer

CONCILIATION

There were 306 teacher bargaining units in 2002. Of the 306 units, 114 did not bargain new contracts for the 2002-03 school year because they had reached multi- year agreements in previous year(s). On December 31, 2002, Six 2001-02 bargaining tables remained at impasse.

Mediation is generally the first step in the impasse procedure under Public Law 217. If necessary, fact-finding with advisory recommendations may follow mediation. When a fact-finder's written recommendations are submitted to the IEERB, the report is released to the public through the media within ten days if the contract dispute is not resolved. If an impasse remains after completion of the fact-finding process, the IEERB may provide further mediation or fact-finding, as it deems appropriate.

FACT-FINDING

The IEERB no longer prints fact-finding reports in the Annual Report. There were no fact-finding reports issued in 2002.

Copies of fact-finding reports may be obtained at the state-approved charge for copying, through the IEERB, which maintains copies of fact-finding reports in its library.

The IEERB maintains a log of conciliation cases from 1974 through the present. We can furnish to negotiators a list of mediation and fact-finding cases for a particular school corporation or for a particular mediator or fact-finder. Requests for this information should be directed to the IEERB Research Division.

UNFAIR PRACTICE CASES

During the 2002 calendar year, twenty- one (21) unfair practice complaints were filed with the IEERB. On December 31, 2002, seventeen (17) unfair practice complaints were pending, up from fifteen (15) one year before. Full-Time agency staff processed all of the 2002 cases.

2002 UNFAIR PRACTICE COMPLAINTS

	SCHOOL CORPORATION	CASE NUMBER	COUNTY	DISPOSITION
1	MSD of Boone Twp.	U-02-20-6460	Porter	Dismissed
2	Decatur	U-02-01-2655	Decatur	Pending
3	Gary	U-02-19-4690	Lake	Pending
4	Harrison-Washington	U-02-05-1885	Gaston	Dismissed
5	Indianapolis	U-02-07-5385	Marion	Dismissed
6	Knox	U-02-12-7525	Spencer	Pending
7	Knox	U-02-14-7525	Spencer	Dismissed
8	Lake Ridge	U-02-13-4650	Lake	Pending
9.	Lake Ridge	U-02-17-4650	Lake	Pending
10.	MSD Lawrence	U-02-09-5330	Marion	Pending
11.	Merrillville	U-02-04-4600	Lake	Pending
12.	Muncie	U-02-02-1970	Delaware	Pending
13.	River Forest	U-02-06-4590	Lake	Pending
14.	School City of East Chicago	U-02-11-4670	Lake	Dismissed
15.	School City of East Chicago	U-02-10-4670	Lake	Pending
16.	School City of East Chicago	U-02-15-4670	Lake	Pending
17.	School City of Hobart	U-02-16-4730	Lake	Pending
18.	South Adams	U-02-18-0035	Adams	Pending
19.	South Central Area Vocational	U-02-08-6105	Orange	Pending
20.	South Harrison	U-02-21-3190	Harrison	Pending
21.	Taylor	U-02-03-3460	Howard	Pending

**BEFORE THE INDIANA EDUCATION
EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF:

EAST CHICAGO FEDERATION OF)	
TEACHERS, LOCAL 511, et al.,)	
)	
Complainants,)	
)	
and	)	Case No. U-02-10-4670
)	
BOARD OF SCHOOL TRUSTEES,)	
SCHOOL CITY OF EAST CHICAGO,)	
)	
Respondent.)	

INTERLOCUTORY ORDER

Come now the Complainants and file their "Motion for Interlocutory Order," which reads in the following words and figures, to-wit:

[H.I.]

And the Board considered the evidence and arguments of the parties herein on November 14, 2002, and now **GRANTS** the said motion and **ORDERS** the following:

The Respondent is ordered to cease and desist from permitting school employee organizations other than the exclusive representative to meet on school property or to use school facilities until this case is decided on the merits, dismissed, or the parties agree to a disposition thereof.

Dated this 15th day of November, 2002.

Dennis P. Neary, Chairman

William E. Wendling, Jr., Member

John E. Lillich, Member

**BEFORE THE INDIANA EDUCATION
EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF:

SOUTH ADAMS CLASSROOM)	
TEACHERS ASSOCIATION, et al.,)	
)	
Complainants,)	
)	
and	)	Case No. U-02-18-0035
)	
SOUTH ADAMS SCHOOLS,)	
)	
Respondent.)	

BOARD ORDER

The above-captioned case came before the Indiana Education Employment Relations Board on November 14, 2002, to consider Complainants' Request for Emergency Relief, and the Board, having considered the oral arguments of the parties, now **DENIES** the request for emergency relief.

Dated this 15th day of November, 2002.

APPROVED BY:	Dennis P. Neary, Chairman
	William E. Wendling, Jr., Member

DISSENTING:	John E. Lillich, Member
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2001 UNFAIR PRACTICE COMPLAINTS

	SCHOOL CORPORATION	CASE NUMBER	COUNTY	DISPOSITION
1.	Anderson	U-01-16-5275	Madison	Pending
2.	Bartholomew	U-01-01-0365	Bartholomew	Dismissed
3.	Carmel Clay	U-01-12-3060	Hamilton	Dismissed
4.	Carmel Clay	U-01-15-3060	Hamilton	Dismissed
5.	Crawfordsville	U-01-18-5855	Montgomery	Dismissed
6.	Dewey Twp.	U-01-11-4790	LaPorte	Dismissed
7.	East Chicago	U-01-07-4670	Lake	Decision
8.	Franklin Twp.	U-01-20-5310	Marion	Dismissed
9.	Lafayette	U-01-13-7855	Tippecanoe	Dismissed
10.	New Prairie	U-01-14-4805	LaPorte	Dismissed
11.	Northern Wells	U-01-06-8435	Wells	Decision
12.	Pike Twp.	U-01-19-5350	Marion	Dismissed
13.	Randolph Eastern	U-01-04-6835	Randolph	Dismissed
14.	Randolph Eastern	U-01-10-6835	Randolph	Dismissed
15.	South Bend	U-01-17-7205	St. Joseph	Dismissed
16.	Southwestern Jefferson	U-01-05-4000	Jefferson	Pending
17.	Union	U-01-02-6795	Randolph	Dismissed
18.	Union Twp.	U-01-08-6530	Porter	Dismissed
19.	Western Howard	U-01-03-3490	Howard	Dismissed
20.	Western Howard	U-01-09-3490	Howard	Pending

**BEFORE THE INDIANA EDUCATION
EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF:

EAST CHICAGO FEDERATION OF)	
TEACHERS, LOCAL 511, AFT, <i>et al.</i> ,)	
)	
Complainants,)	
)	
and	)	Case No. U-01-07-4670
)	
BOARD OF TRUSTEES OF THE SCHOOL)	
CITY OF EAST CHICAGO,)	
)	
Respondent.)	

HEARING EXAMINER'S REPORT

Pursuant to the pleadings in the above-captioned case, upon the basis of evidence adduced at a hearing held in the Respondent's administration building in East Chicago, Indiana, on November 7 and 12, 2001, and upon his evaluation of the credibility of the witnesses, consideration of pre- and post-hearing briefs submitted by the parties, and the applicable law, the Hearing Examiner now makes the following:

FINDINGS AND CONCLUSIONS OF FACT

1. The Complainant East Chicago Federation of Teachers, Local 511, AFT ("Federation"), at all times material, was a "school employee organization" as that term is defined by Section 2(k) of the Certificated Educational Employees Bargaining Act ("CEEBA"), Indiana Code 20-7.5-1, Public Law 217-1973.
2. The Federation, at all times material, was the "exclusive representative" of the Respondent's school employees as the term "exclusive representative" is defined by Section 2(l) of CEEBA.
3. The Respondent Board of Trustees of the School City of East Chicago ("School Corporation"), at all times material, was a "school employer" as that term is defined by Section 2(c) of CEEBA.
4. Complainant Jose L. Mejia, who signed the "Complaint for Unfair Practice" herein under oath, was a "school employee" of the School Corporation as the term "school employee" is defined by Section 2(e) of CEEBA and became president of the Federation in early May, 2001. Mejia had previously served many years as vice president of the Federation.

5. Victoria Candelaria served as the president of the Federation for the fifteen years prior to early May, 2001. Candelaria has served, and continues to serve, as the president of the Indiana Federation of Teachers.
6. For many years prior to her resignation in the spring of 2001, Elizabeth Quinn was the third of the three Federation decision-makers. She served as discussion chairperson.
7. At all times material, John Flores, Ph.D., was the "superintendent" of the School Corporation as that term "superintendent" is defined by Section 2(d) of CEEBA. At that time, he was beginning his seventh year as the School Corporation's chief administrative officer.
8. At all times material, George Manous was the Director of Human Resources and Labor Relations and was a "supervisor" as that term is defined in Section 2(h) of CEEBA.
9. Both parties' principal discussion participants agreed that the Federation and the School Corporation have engaged in discussion since CEEBA became effective. Furthermore, pursuant to a contractual obligation, the parties have discussed subjects of concern to either party since 1968.
10. There are two types of discussion. One involves short communications between the Federation and the School Corporation regarding important school issues which can best be resolved with immediate decision-making. The parties have resolved many problems or potential problems through such discussion. Flores is a frequent participant.
11. The second type of discussion is designed to address education issues which require substantial review and analysis. For example, the parties spent a number of discussion sessions, over a period of time, reviewing and evaluating the effectiveness of the teaming process at the junior high schools. As a result of their efforts, the parties agreed that teaming had not been as successful as the parties had anticipated. The School Corporation later eliminated such teaming in 2001-2002 without much resistance from the Federation.
12. Although Flores controls and oversees the discussion process, he delegates the conduct of the second type of discussion to Manous.
13. Discussion occurred during 2000-2001. However, it was less frequent than in prior years.
14. In the early 1990's, the School Corporation employed specialists to provide music, art, and physical education instruction to elementary students.
15. In the spring of 1994, the School Corporation was forced to make significant budget cuts. The School Corporation and the Federation conducted a number of discussion sessions to evaluate the merits of different types of cuts. At that particular time, the parties were exerting great effort to reestablish and successfully maintain a new discussion relationship. In the recent past, there had been a strike.

16. Under the leadership of Dr. Norman Comer, then-superintendent, the School Corporation proposed, at least, some cuts in all classifications of School Corporation employees, including administrators. Comer served as president of the School Board during the period in question here.
17. In 1994, the Federation had initially contended that the specialists should be retained. However, as a result of her extensive participation in the discussion process and of her belief that the School Corporation was dealing in good faith by considering some cuts in all classifications of employees, Candelaria ultimately agreed with the School Corporation that "extras" (such as the elementary specialists) must temporarily be sacrificed to maintain a strong program of "basics."
18. During the parties' negotiations in 1997, the Federation advocated strongly for the restoration of all three elementary specialist programs. Ultimately, the School Board, outside of the contract, promised the Federation that it would try to restore part of the elementary music program that school year. The Board similarly pledged that in future years it would attempt to restore at least part of the elementary art and physical education programs.
19. In 1997, the Board fulfilled its promise regarding the elementary music program.
20. Pupils in kindergarten through third grade received fewer minutes of music instruction per week than those in grades four through six. However, in both instances, during the period when the music specialist was present in any given teacher's classroom, the School Corporation afforded that regular classroom teacher the opportunity to pursue other school-related tasks.
21. The specialists, with the encouragement and consent of the former assistant superintendent, Mr. Cogan, developed and implemented a sophisticated elementary music curriculum. Veronica Davis, who has outstanding music credentials, led her colleagues in designing that special curriculum.
22. The state elementary music standards contain more basic goals, objectives, and (by implication) methods for elementary music instruction than did the specialists' curriculum.
23. In November and December, 2000, the School Corporation knew that significant cuts would have to be made in the following year's budget. The most obvious factors which brought about the School Corporation's desperate financial situation in 2001-2002 (and future years) were: (1) the unwillingness of LTV to pay its taxes (and its later declaration of bankruptcy) and (2) the fact that only about 90 percent of the local taxes could be collected.

24. However, as Flores indicated, the problem was more complex. He pointed out that for particular reasons the financial problems actually began in 1999-2000. To illustrate, Flores noted that some of the property taxes owing (by those other than the steel industry) in that year also could not be collected and that utility expenditures substantially exceeded the customary amounts.
25. Within this setting, Flores met with Candelaria in late November or early December 2000 to discuss the fact that substantial cuts would have to be made in the budget for the coming school year. Flores presented to her a comprehensive examination and *review* of the *many* School Corporation programs and/or personnel which *possibly* could be cut.
26. He indicated the elementary music program was *one* of those *many* programs which *possibly* could be cut.
27. At that meeting, they did not talk about the specific merits of cutting any particular programs, including the elementary music program.
28. Prior to that late fall 2000 meeting between Candelaria and Flores, there had been no talks between the parties about potential budget cuts in any programs.
29. Subsequent to that meeting, no talks occurred between the parties concerning budget cuts in any program until approximately mid-February, 2001.
30. In the early months of 2001, Flores finalized the criteria he intended to use in reviewing and evaluating whether to cut various programs and/or personnel. He had two goals: (1) preserving the most "basic" components of a public school kindergarten through twelfth-grade education and (2) retaining the School Corporation's state accreditation. Such accreditation is referred to as the "commission" (or evaluation) which the state confers on any particular school corporation.
31. The parties had a long-established previous practice of discussing specific, *individual* rif(s)¹ before the School Corporation made the official *decision* to take such adverse personnel action(s). This was so regardless of whether the rifs (or terminations) were effected by non-renewal or cancellation of contract.

1 Section 5. SUBJECTS OF DISCUSSION.

(a) A school employer shall discuss with the exclusive representative . . . on the following matters:

(1) Working conditions, other than those provided in [IC 20-7.5-1-4].

* * *

(5) Hiring, promotion, demotion, transfer, assignment, and retention of certificated employees,. . .

* * *

(emphasis added)

32. One of the briefs stated that the rifs of the specialists and of a secondary music teacher were an allegedly discussable Section 5(a)(5) subject because in the past the School Corporation purportedly had discussed separate, individual personnel matters with the Federation: for example, rifs and other subjects enumerated in that particular subsection, such as "hiring."
33. Those three prior instances - - which allegedly demonstrated the discussability of the rifs of the specialists and of the secondary music teacher - - were: (1) the rifs of the specialists in 1994, (2) the rifs of the teaming teachers at the junior high schools in 2001, and (3) the "hiring" element of the Elementary Class-Size Reduction Grant.

Because budget cuts became necessary in 2001, the School Corporation decided, prior to mid-February, 2001, to rif the teachers involved in teaming. However, the transcript is devoid of evidence which would show that teaming ever truly was discussed within the context of budget cuts: that is, teaming never was discussed *within the context of rifing* all the teaming teachers *in 2001 because of* the school's budget crisis.² Instead, teaming was discussed as a teaching method.

In other words, at the time teaming was discussed - - which had to have occurred before November, 2000 - - the School Corporation still had the funds to continue employing the teaming teachers. Thus, the evidence does not show that teaming was discussed within the specific context of rifs.³

34. Similarly, the evidence shows that the Elementary Class-Size Reduction Grant also was discussed by Candelaria and Linda Nolan, a supervisor, as a teaching method rather than as an individual personnel matter: that is, the "hiring" of additional teachers.⁴

2 Please recall that Manous did tell the Federation at the February, 2001, discussion session that the teaming teachers would be eliminated. However, there is no evidence showing that, in February, 2001, the parties engaged in any meaningful discussion exchange concerning the rif of the teaming teachers. To the contrary, the evidence shows that extensive discussion occurred, over a period of time in 1999-2000 (and, perhaps, in the early fall of 2000), concerning whether teaming was an effective teaching method. At the time of those discussions, the extent of the School Corporation's negative fiscal position was not yet known. In fact, even though Candelaria, Manous, and Flores agreed that teaming was most likely an ineffective teaching method, the teaming teachers were retained, at that time, because the School Corporation was then participating in performance based evaluations and, perhaps, in accreditation inspections. See IC 20-1-1-6.3; IC 20-10.1-3.

3 Note that it may have been implicit, in 1999 and in 2000, that at some time in the future, teaming teachers might lose their jobs because teaming was ineffective, but job losses were not the central point of the discussion.

4 When confronted, at the hearing, with the School Corporation's contention that the Federation's only prior interest in discussing grant applications pertained to who was creating a job for whom, Candelaria vehemently protested, stating that the Federation had a genuine and substantial interest in improving student achievement through better teaching methods which could be realized as a result of effective grant applications. Therefore, Candelaria reasoned IEERB should conclude that in many instances the discussion of grant applications was not a self-serving undertaking by the Federation and its members but rather that such discussion was conducted to serve the interests of the greater school community. Candelaria used that Class-Size Reduction Grant application to illustrate that she and Linda Nolan, a supervisor, had, as a result of discussion, tweaked that grant application so as to improve its delivery of instructional services to the pupils.

35. In short, the Federation alludes to only one instance wherein the parties previously had discussed a Section 5(a)(5) subject as it applied to individual teachers.⁵ Specifically, in 1994, the parties discussed the potential rifts of the specialists before the School Corporation made the decision to take such action.

However, the fact that on one occasion the parties discussed an individual personnel matter does not demonstrate the existence of an established previous practice. For that reason, the Federation's conclusion as to why those rifts should be discussable is not supported by the evidence.⁶

36. However, *other evidence* shows that the parties did have an established previous practice of discussing separate, individual rifts. In regard to the 1994 discussion about the *potential* rifts of the specialists, Candelaria's uncontested testimony was that such discussion was not an isolated event but was rather the usual and customary practice of the parties.⁷
37. In approximately mid-February, 2001, the parties held a discussion session to exchange viewpoints regarding the budget cuts. Manous identified for the Federation four categories of School Corporation personnel cuts which he *thought* would be made. First, he said that the School Corporation would not replace retiring administrators. Additionally, he said that the School Corporation would make cuts in: (1) clerical employees, (2) non-certificated employee administrators, and (3) teaming teachers at the junior high schools.
38. At that February discussion session, Manous alluded to the specialists within the context of an explanation about the many School Corporation programs in which additional *possible* cuts *still* might be made. He listed the elementary music program was one of those programs. In other words, Manous's reference, at that time, to the specialists was very similar to that which Flores made to Candelaria in November or December, 2000. Manous was not singling out the specialists but was simply observing, as Flores had done earlier, that the specialists were one of many personnel cuts which possibly could occur in the future. The parties did not talk about the merits of retaining or cutting the elementary music program.
39. During that session, Manous emphasized that more cuts would have to be made. However, he did not indicate that it was any more likely that the specialists would be cut than it was that any other particular program would be.

5 Note that the parties may have, indeed, had a long-standing previous practice of discussing all of the subjects listed in Section 5(a)(5). Nevertheless, there simply is no evidence, in this transcript, showing that such a practice existed.

6 On the other hand, note that the working conditions of the regular elementary teachers was a discussable subject.

7 Note that Candelaria did not state that there was an established previous practice in regard to any term enumerated in IC 20-7.5-1-5(a)(5) except the term "retention."

40. At that time, Manous knew that the four specific categories of personnel cuts, set forth above, actually would be made because he had attended meetings between Flores and the Board at which those employment decisions had been made. Similarly, in February, he also knew that Flores and the Board yet had not singled out the specialists as a personnel category to be eliminated.

Additional Findings and Conclusions of Fact, which pertain solely to the exchange between Manous and the Federation at the mid-February discussion session, are set out, *infra*. Those Additional Findings and Conclusions of Fact are incorporated into and made a part of this Hearing Examiner's Report.

41. In late March or early April, 2001, Flores and the Board unofficially decided to eliminate the specialists. Manous attended that meeting. It is very probable that Flores and the Board met again in early April to further consider their decision concerning the specialists. On April 12, 2001, the Board held an executive session during which they again considered their unofficial decision to eliminate the specialists.
42. Later on April 12 during a regular meeting, the Board made the decision ultimately to eliminate the elementary music program. It did so by ridding two specialists and a secondary music teacher, who necessarily had to be terminated to effect the abolition of that music program.
43. Specifically, the superintendent presented to the Board for its approval his April 12 "Personnel Report" which sought the following authority:
- A. "Permission to send letters of non-renewal of contracts to all first-year teachers for possible reduction-in-staff."
 - B. "Permission to send letters of non-renewal for two (2) non-permanent teachers for the 2001-2002 school year: Kammille D. Brinker, Taleria R. Topps."
 - C. "Permission to send letters of cancellation of contracts to three (3) semi-permanent teachers for the 2001-2002 school year: Colleen M. Cavallaris, Jayme L. Meinhardt, Becky J. Rodriguez"
- The Board unanimously approved the superintendent's report.
44. As noted above, the School Corporation rided the three music teachers on April 12, 2001. Additionally, from the date of the mid-February, 2000, discussion meeting through April 12, 2001, the School Corporation did not talk with the Federation about the elimination of the elementary music program or about the potential rids (or terminations) of the three music teachers.
45. The seven specialists were: Ms. Davis, Ms. Morrow, Ms. Lewis, Ms. Brinker, Ms. Trudeau, Ms. Scarborough, and Ms. Danick. Becky Rodriguez was a music teacher at Block Junior High School.
46. Note that it was *not necessary* for the Board to rid (or terminate) *all* of the specialists.

47. Prior to April 12, two of the specialists - - Scarborough and Danick - - must have informed the School Corporation that they intended to leave East Chicago: that is, to go teach in other school districts in 2001-2002.
48. Additionally, prior to April 12, three other specialists must have informed the School Corporation of their intent to transfer involuntarily to other positions for which they were eligible. Morrow, Lewis, and Davis involuntarily transferred to such alternative positions.
49. Thus, the School Corporation terminated the employment of only two of the seven specialists. It did so with letters of non-renewal. As a result, only two specialists' names - - that is, Brinker's and Trudeau's - - were contained in the superintendent's April 12 "Personnel Report." They were also the only specialists to receive termination (non-renewal) letters on April 26.
50. Some time prior to April 12, Manous met with the specialists and with Rodriguez to tell them that their chances for continued employment with the School Corporation were not good. He also told them that those with dual licensing - - that is, a person with elementary and secondary music licensing (Davis) or persons with elementary music and regular elementary licensing (Morrow and Lewis) - - and sufficient seniority would be eligible for alternative positions such as secondary music and regular elementary.⁸
51. Since the School Corporation initially had decided to eliminate the elementary music program in late March or early April and since Manous had met with the specialists regarding the program's very probable elimination, the School Corporation had the opportunity in early April to discern: (1) which of the specialists had dual licensing and sufficient seniority to be eligible for an involuntary transfer to an alternative position and (2) which of the specialists, prior to April 12, had already definitely decided to leave the School Corporation in 2001-2002.

8 Morrow and Lewis had dual licensing (licensure to teach both elementary music and regular elementary school) and had sufficient seniority to be able to displace two regular elementary school teachers. Davis was licensed to teach kindergarten through twelfth grade music, and her seniority exceeded that of the Block Junior High School music teacher, Becky Rodriguez. Therefore, the School Corporation simply involuntarily transferred those three former specialists, pursuant to the seniority provisions of the collective bargaining agreement, to alternative positions where they displaced other teachers with less seniority: that is, one secondary music teacher was displaced along with two regular elementary teachers. *As a result of each transfer, the School Corporation would have had to rife the displaced teacher.*

52. In this case, it can be inferred that Manous and the School Corporation's general counsel knew that Scarborough and Danick were definitely leaving. If the School Corporation had not been aware of that particular fact, the Board would have voted on April 12 to also deliver rif (non-renewal or cancellation of contract) letters to Scarborough and Danick to assure that their contracts did not automatically renew (or continue⁹) in 2001-2002 when the School Corporation would not need them. Similarly, it can be inferred that those two School Corporation officials knew that Morrow, Lewis, and Davis were involuntarily transferring. If the School Corporation had not known, it would have riffed them to assure that they did not have a contract with the School Corporation for the following year.
53. More precisely, one specialist, Davis, involuntarily transferred to Rodriquez's music position at Block Junior High School. Two specialists, Morrow and Lewis, involuntarily transferred to regular elementary positions.
54. No Federation representative was present when Manous met with the specialists and Rodriquez. Furthermore, none of the specialists nor Rodriquez was a Federation representative.
55. The School Corporation did not inform the Federation about Manous's meeting with the specialists and Rodriquez.
56. Similarly, the specialists and Rodriquez did not tell the Federation that they had met with Manous and that they knew the elementary music program was being eliminated.
57. The transcript is silent as to why the specialists and Rodriquez did not tell the Federation, prior to April 12, that Manous had told them their jobs probably would be eliminated.
58. It can be inferred that an active and effective exclusive teachers' organization, such as the Federation, usually attended regular School Board meetings. Because the Federation did not learn of the impending elimination of the music program until April 26, one can infer that the Federation did not attend the April 12 Board meeting. The transcript is silent concerning this fact.
59. The School Board meets twice a month. Thus, it did not adopt the April 12 Board minutes until late April. Those April 12 minutes were adopted at the second April Board meeting and then were sent to the Federation, as was the custom. As a result, the Federation received the rif (or termination) letters pertaining to Rodriquez, Trudeau and Brinker before it received the April 12 Board minutes, which would have informed the Federation of the Board's decision to rif the three music teachers.

9 The evidence does not show whether Scarborough and Danick were first- or second-year teachers, or whether they were semi-permanent or permanent teachers. Thus, it is not possible to know what type of rif (or termination) letters they, otherwise, would have received.

60. From April 12, 2001 through April 26, 2001 - - the date on which the School Corporation implemented the Board's decision to rif (or terminate) the three music teachers - - the School Corporation did not talk with the Federation about the potential implementation of the previously-made decision to eliminate the elementary music program or about the potential implementation of the previously-made decision to rif those three music teachers.¹⁰
61. The School Corporation delivered Brinker's, Trudeau's, and Rodriquez's rif (or termination) letters to them on April 26. Simultaneously, the School Corporation delivered copies of those letters to the Federation's office. It was at this time that Candelaria figured out, as a result of the cancellation of Rodriquez's semi-permanent contract, that the School Corporation had decided to, and had implemented, the adverse personnel action necessary to eliminate the elementary music program.
62. Herein, Candelaria, on approximately April 20 to 22, asked Manous, on *two* separate occasions, to tell her *who* was going to be *riffed* (regardless of whether by non-renewal or by cancellation of contract). Note Candelaria had no interest in knowing about the routine and customary non-renewals of all of the first- and second-year teachers unless the non-renewal of a particular teacher was *to effect a true reduction-in-force* pertaining to a particular teacher.
63. Manous told Candelaria that all first-year teachers would be non-renewed but that only a few second-year teachers, who the School Corporation did *not* wish to *rehire ever*, would be terminated (or fired) by non-renewal. The usual and customary practice in East Chicago regarding non-renewal was to terminate (and, perhaps, rehire) all first- and second-year teachers.
64. In fact, as noted above, the School Corporation - - to effect ultimately the elimination of the elementary music program in June, 2001 - - needed to and did rif (or terminate *for sure*) only two specialists and one secondary music teacher: respectively, Brinker, Trudeau, and Rodriquez.¹¹
65. All three of those certain terminations (pertaining to the elimination of the elementary music program) were adverse personnel actions of the type about which Candelaria had inquired. Please recall that Candelaria had asked about teacher terminations which were going to occur *because of a reduction-in-force* to balance the following year's school budget.

10 Note that the involuntary transfers of Morrow and Lewis would have displaced two regular elementary teachers. Thus, the School Corporation would also have had to rif (or terminate) those two regular elementary teachers who were displaced by involuntarily transferring specialists. In other words, there were additional true rifs (or terminations) about which Manous did not tell Candelaria when she twice inquired as to whom the School Corporation would terminate as the result of a reduction-in-force.

11 It will be shown below that, in addition to Rodriquez, the School Corporation also riffed (or terminated for sure) two other semi-permanent teachers: specifically, Colleen Cavallaris and Jayme Meinhardt. Both were rehired later.

66. Note that all of the non-renewals or cancellations of contracts (occurring because of *true* reductions-in-force) will result definitely in teacher job losses for at least a year. Additionally, such a teacher never may be rehired because the School Corporation never again may be able to fund the particular position which had to be eliminated for budgetary reasons.¹²
67. Non-renewals, *per se*, are different. Some non-renewals effect permanent job losses; others do not.
68. First, Manous did not tell Candelaria about the certain terminations of the two specialists and of Rodriguez which would result because of a reduction-in-force.

Second, Manous did not tell Candelaria the *names* of any of those three teachers who, because of a reduction-in-force pertaining to the elimination of the elementary music program, were going to lose their jobs.

Third, Manous did not tell Candelaria about two other semi-permanent teachers who, at the time he spoke with Candelaria, were going to lose their jobs due to a reduction-in-force.

69. Manous simply did not respond to Candelaria's particular question. Instead of telling her specifically who would be terminated because of a true reduction-in-force, he told her in general terms how many first- and second-year teachers were going to be *non-renewed* (as contrasted to *truly* rified).
70. Actually, at the time Manous was talking with Candelaria, he knew that the School Corporation would have many open positions in 2001-2002 and that it would be rehiring most (or many) of the non-renewed first-year teachers. Thus, he knew, when speaking with Candelaria, that the School Corporation was not *truly rifting* those first-year teachers with the intent of terminating them for at least the next school year.
71. As shown above, Manous spent a considerable amount of time assuring that the correct specialists were terminated and that the correct specialists were involuntarily transferred. Furthermore, he assured that the teachers, who were being displaced by involuntarily transferring specialists, were also terminated.

Additionally, he had participated in the emotionally charged exchanges with the Federation in both 1994 and 1997 concerning the retention of or the partial reinstitution of the specialists. Therefore, in all likelihood, his failure to correctly answer Candelaria's inquiry about true reductions-in-force was *not inadvertent*.

12 In other words, as a matter of practice, a true rif (the type about which Candelaria inquired) is the certain termination of a teacher (by non-renewal or by cancellation of contract) for at least the following year. A true rif is not the type of personnel action taken in regard to all of the first-year teachers who, in all probability, were going to be rehired because of the many job openings which were going to be available in the School Corporation in 2001-2002.

72. Equally important, Manous, in response to Candelaria's inquiry as to who was being terminated for sure, due to a reduction-in-force, did not tell her about any of the three semi-permanent teachers, including Rodriquez, who were going to lose their jobs (that is, experience true reductions-in-force) by cancellation of contract.¹³
73. If Manous had told Candelaria about either the true reductions-in-force pertaining to the two specialists or about those pertaining to the three semi-permanent teachers, the Federation and the School Corporation would have talked with each other about the elimination of the elementary music program and about the termination of the two specialists and Rodriquez before the School Corporation implemented those actions.¹⁴ That is so because Candelaria - - upon learning that Rodriquez was one of those three teachers - - would have figured out that the School Corporation was eliminating the elementary music program and would have then initiated such talks.
74. After the Federation received the rif (or termination) letters on April 26, it initiated communication (or talks) with the School Corporation about the April 12 rifs of the three music teachers. Such talks were held in early May.
75. Findings and Conclusions of Fact 27, 28, 29, 44, and 60 show that from November, 2000, through April 12, 2001, the School Corporation did not talk with the Federation about its potential (or impending) decision to rif the three music teachers. Since the School Corporation made the decision to rif the three music teachers on April 12, it *did not* talk with the Federation about its potential (or impending) rifs of the music teachers *before* it made its April 12 *decision* to take such action.
76. Since the School Corporation did not talk with the Federation about the potential (or impending) rifs of the music teachers before making its April 12 decision to take such action, it could not have discussed those rifs with the Federation.

13 That on two occasions Manous could not recall, when talking with Candelaria, that those three semi-permanent teachers were going to lose their jobs is strange. At the hearing which occurred many months later, Manous gratuitously stated that ultimately, two of those three semi-permanent teachers were rehired. One was rehired because of a resignation; the other, a sabbatical. In sum, Manous was an accomplished professional human resources and labor relations specialist, who oversaw every personnel action within the School Corporation for many years and who had almost perfect recall of every personnel action in 2001. Nevertheless, Manous, in late April, 2001, when specifically asked by Candelaria about the true rifs that would occur, did not remember to tell her about the rifs of the specialists and about the rifs of the three semi-permanent teachers.

14 Note that the School Corporation did not actually take official action to eliminate the elementary music program until June, 2001. However, such official Board action in June, 2001 merely reaffirmed the adverse personnel actions which had been taken on or before April 26 which effectively eliminated the elementary music program.

77. In the presentation of the case for the defense, the School Corporation adduced a considerable amount of evidence in an apparent attempt to establish that it had discussed the elimination of the specialists with the Federation. Essentially, the School Corporation's evidence showed that, subsequent to the elimination of the specialists, it participated in a substantial amount of communication (or talks) with teachers about the rifs of the three music teachers. In some instances, those teachers were Federation officials; in others, they were not.
78. In other words, the evidence presented by the School Corporation essentially showed that: (1) it did not always talk with the *Federation* about the elimination of the specialists and (2) that it did not talk with the Federation about the elimination of the specialists *before* it made the decision to rif the three music teachers.
79. Set forth below are representative examples of the evidence the School Corporation introduced during the presentation of its case:
- A. Evidence was presented to show that Flores has an "open-door" policy of communicating with the teachers. Specifically, Flores:
 - i. Visited school buildings regularly and met with any *individual* teacher desiring to talk with him about any concern;
 - ii. Permitted *individual* teachers to schedule appointments with him in his office; and
 - iii. Conducted a superintendent's advisory counsel wherein *individual* teachers were afforded the opportunity to express their views, concerns and criticisms.Unquestionably, Flores's open-door policy *positively affects* the school community.
 - B. Subsequent to the delivery of the rif letters to the Federation's office on April 26, the parties, in early May, met to talk about the elimination of the elementary music program.
 - C. The School Corporation's evidence showed that, at the first School Board meeting in May, it afforded a former specialist, Veronica Davis, the opportunity to explain why the elementary music program should be continued. The Board yet had not eliminated officially the program itself. Following her prepared remarks, a dialogue ensued among her and the Board members. They were unusually supportive of the elementary music program. However, they contended that adequate funding of the "basics" must supersede any funding of "extras."
 - D. The School Corporation's evidence showed that during the statutorily required termination hearings, communication (or talk) occurred between the School Corporation and the teachers. At times some of those teachers with whom the School Corporation communicated (or talked) were representatives of the Federation. See IC 20-6.1-4-14(b) through (i), regarding non-renewals; IC 20-6.1-4-11(a), regarding cancellation of semi-permanent contracts.¹⁵

15 When a School Corporation notifies a teacher of the school board's decision to non-renew her first- or second-year contract, it shall simultaneously notify her that she may contest, before the board, the school corporation's reasons for her non-renewal. IC 20-6.1-4-14. Similarly, when a school board is considering

- E. Subsequent to April 26, Board members expressed their strong support for the program, their hope to temporarily locate alternative funding, and their intent to restore the program as soon as sufficient resources existed. Subsequent to the previously-mentioned meeting, Davis spoke privately with Trustee Trevino, who was very supportive of the program. Candelaria had spoken with Comer, who similarly was very supportive.
- F. At its first meeting in June, the Board officially terminated the elementary music program. There was, at least, some communication (or talks) between the Board and the teachers. At times some of those teachers with whom the Board talked were representatives of the Federation.
- G. Late in the summer of 2001, the School Corporation still was searching for an alternative funding source for the specialists. Specifically, the School Corporation considered submitting an application to the East Chicago Foundation. For unexplained reasons, no grant application was submitted. However, it is most probable that talks occurred between the School Corporation and the teachers, including representatives of the Federation, about such a grant application.
- H. Near the beginning of the 2001-2002 school year, Flores finally decided that he could not reinstate the elementary music program. At that late date, he still was rehiring many of the first-year teachers who had been non-renewed. In other words, he simply was following the School Corporation's usual and customary practice to rehire those former first-year teachers to instruct pupils in the "basics."

ISSUE

Did the School Corporation, by not talking (or engaging in an exchange of viewpoints) with the Federation about the potential rifts of the three music teachers before it made its decision to terminate them, fail to discuss those rifts and thereby violate CEEBA?

DISCUSSION

In East Chicago contractual discussion, which was unusually broad in scope, began in January, 1971. As a result, the parties became familiar with the process prior to CEEBA and easily made the transition to statutory discussion. Interestingly, in East Chicago that early discussion experience was a positive one which foretold how over the subsequent years the School Corporation would continue exercising due diligence in its labor relations and, consequently, would compile an outstanding record of compliance with CEEBA. This was so even during the superintendencies of Comer and Flores, periods during which the challenges confronting public school educators increased substantially.

whether to cancel a permanent (or semi-permanent) teacher's contract, the school corporation must advise the teacher that she has a right to a board hearing on the matter. Such a hearing precedes the board's ultimate deliberations on the matter. IC 20-6.1-4-11. In other words, such hearings about job loss or imminent job loss are essentially due process hearings for individual teachers which occur after a school board has made (or has essentially made) a decision concerning the termination of a teacher's contract.

Consider, for example, that for approximately twenty-seven years, the School Corporation has been an offending party in only two other unfair practice proceedings.¹⁶ In both cases, the conduct involved was anomalous and was not the type of school activity over which a superintendent or the board had any control. One case involved the unanticipated conduct of a school supervisor;¹⁷ the other, a spontaneous dispute between two teachers.¹⁸ Neither incident could have been foreseen nor prevented. On both occasions, the School Corporation cooperated fully with the Indiana Education Employment Relations Board ("IEERB").

In many school districts, the principal focus of the exclusive teachers' organization's activities under CEEBA has been upon the bargaining of wages and fringe benefits. However, there have been a number of school districts wherein the school corporations and the exclusive teachers' organizations have established significant working relationships to successfully head off and/or resolve disputes regarding school issues. In such instances, the parties have invoked the discussion processes as the base upon which they developed and implemented their joint undertakings to prevent and resolve disputes.¹⁹

Obviously, such a working relationship for discussion serves the interests of both parties, as well as (the sometimes different) interests of school patrons. Furthermore, the existence of such a relationship enables the exclusive teachers' organization effectively to represent a broader array of constituency interests than it could if it focused its energies solely on bargaining.

A number of the Indiana local affiliates of the American Federation of Teachers ("AFT") and their respective school corporations utilized discussion prior to the passage of CEEBA. The present collective bargaining agreements of some of those AFT affiliates still contain express language granting contractual discussion rights and imposing corresponding obligations on the respective parties. For example, the present public school collective bargaining agreements in Hammond, LaPorte, North Knox, South Knox, Anderson, and East Chicago still contain such express language.

In the fall of 2000, the School Corporation became aware that a substantial budget shortfall would occur in the following school year and that significant budget cuts had to be made. In late November or early December, the School Corporation discussed this with the Federation. Furthermore, the School Corporation specifically identified for the Federation the many school programs - - including the elementary music program - - in which cuts might

16 The School Corporation was involved in two other IEERB proceedings. In School City of East Chicago, U-80-8-4670, 1981 IEERB Ann. Rep. 350, the Board dismissed the Complaint (1981). In School City of East Chicago, U-86-21-4670, 1987 IEERB Ann. Rep. 102, 105 (1987), the IEERB hearing examiner held that no unfair practice had been committed.

17 School City of East Chicago, U-89-29-4670, 1990 IEERB Ann. Rep. 91 (1990).

18 School City of East Chicago, U-92-37-4670, 1993 IEERB Ann. Rep. 81 (1993).

19 Several cases where discussion relationships have existed: Kokomo-Center Township School Corporation, U-98-03-3500, 1998 IEERB Ann. Rep. 53 (1998); School City of Hobart, U-93-19-4730, 1995 IEERB Ann. Rep. 201 (1995); Anderson Community School Corporation, U-97-29-5275, 1998 IEERB Ann. Rep. 98 (1998), aff'd by Bd, 1998 IEERB Ann. Rep. 114 (1998); Tippecanoe School Corporation, U-90-05-7865, 1990 IEERB Ann. Rep. 69 (1990).

possibly occur. The parties next met in mid-February to discuss some of the School Corporation's budget-cutting activities.

The School Corporation ultimately made deep budget cuts. In addition to cuts in certain distinct categories of personnel - - for example, non-certificated administrative employees - - the School Corporation later eliminated all but the most basic elementary school offerings. As a result, on April 12, 2001, the School Corporation rified (or terminated) the particular teachers necessary to effect the ultimate elimination of the elementary music program. The School Board officially abolished that program at its first meeting in June, 2001.

I.

First, the parties' allegations and contentions will be examined briefly in an attempt to fully appreciate why this particular dispute arose and why it was accompanied by such strong sentiments. Second, the applicable statutes and case law will be set forth and analyzed. Third, the applicable law will be applied to the pertinent findings above to determine whether the School Corporation fulfilled its statutory obligation to discuss with the Federation the potential (or impending) reduction-in-force as it pertained to the elementary music specialists. Finally, a summary of this case will be made to consider whether the parties conceivably could restore some positivism to their discussion relationship.

A.

The Federation's discussion allegation claimed that the School Corporation rified three music teachers without prior discussion. Furthermore, that allegation included the claim that the School Corporation, in essence, rified the three music teachers necessary to effect the elimination of the elementary music program. Although the parties met, in February, 2001, for discussion about several budget cuts which the School Corporation already had decided to make, the Federation claimed that the potential elimination of the elementary music program had not been discussed during that February session and that no other discussion sessions had been held.

The School Corporation asserted four separate and distinct contentions which purportedly established that it did not violate CEEBA. First, the School Corporation maintained that, subsequent to 1994, the parties have not engaged in formal discussion. That being the case, the School Corporation further maintained that the Federation, through its acquaintance, had waived its right to engage in formal discussion.

Second, the School Corporation maintained that discussion of the potential elimination of the specialists occurred during the parties' February session. Third, the School Corporation maintained that its rifs of the three music teachers were carried out in accordance with the state statutes which prescribe the steps a school corporation must take to terminate a teacher. Finally, the School Corporation maintained that, after it had rified the three music teachers, it had engaged in talks (or communication) with teachers (including a few Federation officials) about those earlier rifs.

B.

CEEBA became effective on July 1, 1973. That legislation essentially extended to full-time teachers the right to engage in two new activities with their school corporation. Specifically, CEEBA afforded teachers, acting through their exclusive teachers' organization, the right to *bargain* their wages and fringe benefits and the right to *discuss* with their school corporation's superintendent any changes in certain subjects having an unusual effect on teachers.

In regard to both of those new teachers' rights, CEEBA imposed corresponding obligations on the school corporation to meet for such bargaining and discussion. Similarly, CEEBA conferred on each school corporation the right to bargain and to discuss and simultaneously imposed a corresponding duty on each school corporation's exclusive teachers' organization to participate accordingly.

The discussion requirements of CEEBA, as interpreted by the Indiana Supreme Court, now must be set forth and briefly analyzed. Then, the more recent decisions of the Court of Appeals and those of IEERB must be analyzed and applied.

CEEBA sets forth, in a very straight-forward manner, the respective rights and obligations of the parties concerning discussion. Essentially, that legislation provides that certain designated subjects of school activity must be discussed by a school corporation and its exclusive teachers' organization before the school corporation may make decisions about such activities. Section 3 states, in part:

On and after January 1, 1974, school employers and school employees shall have the obligation and the right to bargain collectively the items set forth in section 4, the right and obligation to discuss any item set forth in section 5 and shall enter into a contract embodying any of the matters on which they have bargained collectively.

Section 5(a) states, in part:

A school employer shall discuss with the exclusive representative of certificated employees, and may but shall not be required to bargain collectively, negotiate or enter into a written contract concerning or be subject to or enter into impasse procedures on the following matters:

- (1) Working conditions, other than those provided in section 4 of this chapter.

* * *

- (5) Hiring, promotion, demotion, transfer, assignment, and retention of certificated employees. . . .

Section 2(o) states that the term "discussion" means:

the performance of the mutual obligation of the school corporation through its superintendent and the exclusive representative to meet at reasonable times to discuss, to provide meaningful input, to exchange points of view, with respect to items enumerated in section 5 of this chapter.

At one time, it was unclear to IEERB practitioners whether discussion had to occur prior to a school corporation making a decision on a discussable Section 5(a) subject or whether discussion subsequent to school corporation decision-making also would satisfy CEEBA's discussion requirement. Although IEERB appears consistently to have advocated that discussion ideally should precede final school corporation decision-making, many school corporation practitioners frequently contended that discussion subsequent to decision-making would also satisfy the statutory requirement. See Rensselaer Central School Corporation, U-76-22-3815, 1976-77 IEERB Ann. Rep. 652, 653 (1977); Oregon-Davis School Corporation, U-77-26-7495, 1978 IEERB Ann. Rep. 648 (1978); Caston Community Schools, 1979 IEERB Ann. Rep. 276, 279 (1979).²⁰

Ultimately, the Indiana Supreme Court in Evansville-Vanderburgh School Corporation v. Roberts, 405 N.E.2d 895 (1980) settled the controversy concerning when discussion must occur. Therein, the Court held that discussion must *precede* implementation, stating:

[Evansville-Vanderburgh School Corporation] nevertheless complains that since the statute does not establish a 'time frame' for discussions, it discharged its obligation by its willingness to discuss the issue *after* the [teacher evaluation] plan was implemented. We agree with the IEERB below that 'meaningful input' requires a willingness to discuss *prior* to implementation of the plan.

Id. at 899. (Court's emphasis) Note that the Evansville Court explained that discussion had to occur before the school corporation *implemented* the enumerated subject rather than before a school corporation made a *decision* on such a subject. Thus, Evansville initially appeared to hold that the school corporation activity before which discussion must occur always would be implementation. However, such a holding was in conflict with the earlier IEERB decisions upon which the Supreme Court had relied. Those IEERB decisions held that discussion must occur before a school corporation makes a decision on an enumerated subject.

As one would expect, a more careful reading of Evansville illustrates that therein discussion had to occur before implementation (rather than before decision-making) solely because that particular case had an anomalous factual situation. There, the school corporation itself previously had drafted (and, thus, adopted) the teacher evaluation plan: that is, the enumerated subject therein. Later, after the school corporation implemented the plan, the association challenged the validity of it, claiming that the school corporation had failed to

20 In each of those non-renewal cases, IEERB looked to see whether the exclusive teachers' organization had requested discussion of the non-renewals. In each instance, the exclusive teachers' organization knew to make such a request because the school corporation had informed the teachers of their impending non-renewals; *contra* Carroll Consolidated School Corporation, 493 N.E.2d 737, 739 (Ind. Ct. App. 1982).

discuss it with the association. Specifically, the association alleged that the implemented plan affected the teachers' working conditions. The association further alleged that the school corporation's implementation of its new teacher evaluation plan before it discussed the plan with the association constituted a violation of the discussion requirement of CEEBA.

C.

Subsequent to Evansville, the decisions of the Court of Appeals and of the IEERB have held that the school corporation activity before which discussion on an enumerated subject must occur is decision-making. Therefore, whenever a school corporation makes a decision on an enumerated subject without previously having discussed the potential change with the exclusive teachers' organization, the school corporation will have violated Section 5 of CEEBA and thereby will have committed an unfair practice. There are two exceptions to that general rule;²¹ neither is applicable here.

To illustrate the principle stated above, consider the Court of Appeal's opinion in Union County School Corporation v. IEERB, 471 N.E.2d 1191 (Ind. Ct. App. 1984). There, inclement weather caused the school corporation to cancel school days in two consecutive years. In 1976-77, the teachers received extra pay for make-up days. In 1977-78, without prior discussion, the school board made the decision not to pay teachers extra for make-up days that year. When the school board made that decision, the teachers were unaware that the board was considering such a change. Consequently, they did not request to discuss the impending school board change.

The Court held that the school corporation had a duty to discuss that change regarding extra pay for make-up days with the teachers because the teachers justifiably had relied on the school corporation's prior conduct. The Court observed that they had had to do so solely because the school corporation had not informed them of its intent to consider a change in its policy on the issue. Union County, *supra*, 471 N.E.2d at 1199. In other words, the school corporation made a decision on an enumerated subject without affording the teachers the opportunity to discuss the potential policy change.

IEERB has consistently held that, prior to a school corporation change in a previous practice or policy about any subject enumerated in Section 5(a), the school corporation and the exclusive teachers' organization must engage in a mutual examination of both parties' ideas and concerns regarding that subject. As illustrated above, the Indiana Supreme Court adopted IEERB's initial and long-standing interpretation as to when discussion must occur. Subsequent to Evansville, the IEERB has reiterated that requirement in cases such as Franklin County Community School Corporation, U-91-19-2475, 1991 IEERB Ann. Rep. 63 (1991). There, IEERB stated:

21 See Union County, *supra*, 471 N.E.2d at 1199-2000, which holds that when the enumerated subject involved is one which affects the entire school community rather than one which principally affects only teachers, the school corporation may adopt a policy regarding such a subject prior to discussing the change in the subject with the exclusive teachers' organization. However, the school corporation must then discuss the change before implementing it. Second, in new cases, with factual situations similar to the one in Evansville, discussion will have to occur before implementation rather than before decision-making.

Sections 3 and 5(a) impose an obligation on a school corporation to discuss any subject enumerated in Section 5(a). In other words, prior to making a change in a discussable subject, a school corporation must exchange points of view regarding that discussable subject with the teacher organization. MSD of Wabash County, U-75-15-8050, 1975-76 IEERB Ann. Rep. 945, 949-50 (1975); Marion Community Schools, U-76-44-2865, 1976-77 IEERB Ann. Rep. 617, 619-621 (1976), *aff'd* by the Board at 623 (1977); Porter Township, U-84-45-6520, 1985 IEERB Ann. Rep. 149, 152 (1985).

A more recent case, Community School of Frankfort, U-94-07-1170, 1995 IEERB Ann. Rep. 128 (1995), which relied on later IEERB cases, also concluded that a school corporation has a statutory obligation to discuss any potential decision on an enumerated subject before making a decision, stating:

Indiana cases have held that for a complainant to prevail on a refusal to discuss claim, he or she must show that the opposing party made an unlawful change [one made without prior discussion]²² in a discussable subject. *See* Evansville-Vanderburgh School Corporation v. Roberts, 405 N.E.2d 895 (Ind. 1980); M.S.D. of Wayne Township, U-91-05-5375, 1991 IEERB Ann. Rep. 151 (1991); M.S.D. of Decatur Township, U-87-08-5300, 1987 IEERB Ann. Rep. 71 (1987), dismissed by Board, 1988 IEERB Ann. Rep. 71 (1988).

1995 IEERB Ann. Rep. at 139.

Finally, note that the type of discussion participation which will fulfill a party's obligation to engage in a mutual exchange of ideas and positions was identified with particularity in Cloverdale Community Schools, U-84-24-6750, 1984 IEERB Ann. Rep. 46 (1984), which stated:

The discussion process requires more than mere reading of proposals with only one side giving rationale. Section 2(o) expressly states that the parties are *mutually* obligated ' . . . to provide meaningful input, to exchange points of view. . . .' Meaningful input contemplates more than just listening and then taking a unilateral action. Input refers to the discussion process during which each side is required to exchange points of view and information. Tippecanoe School Corporation, U-74-15-7865, 1974-75 IEERB Ann. Rep. 499 (1974).

1984 IEERB Ann. Rep. at 51. (emphasis in original)

22 The change the school corporation had made in a discussable subject was purportedly "unlawful;" simply because the school corporation had made it before discussing the matter with the Association. 1995 IEERB Ann. Rep. at 139-140.

II.

In this case, Finding and Conclusion of Fact 75 demonstrates that, from December, 2000 and through April 12, 2001, the School Corporation did not talk with the Federation about the potential (or impending) rifs of the three music teachers. The School Corporation rified (or terminated) the three music teachers on April 12, 2001. As a result, the School Corporation did not talk to the Federation about those potential (or impending) rifs before it officially made the decision to take such action.

Since the School Corporation did not initiate talks (or engage in an exchange of viewpoints) with the Federation about the pending rifs of those three teachers before it made the decision to take such action and since discussion must precede school corporation decision-making, the School Corporation did not discuss those rifs with the Federation. Thus, by its failure to discuss that particular enumerated subject, the School Corporation violated Sections 7(a)(5) and 7(a)(6) of CEEBA and thereby committed a discussion unfair practice.

III.

A.

When one considers the factual situation within which the School Corporation failed to discuss those three rifs, there is something quite notable about it. During the winter and spring of 2001, the superintendent and the Board were confronted with perhaps the most debilitating shortfall ever incurred by an Indiana school corporation. Furthermore, no state statutory mechanism existed, or now exists, to address such a predicament. Additionally, the news became worse as they endeavored to keep the school doors open. For example, the School Corporation received news that Inland Steel may have been over-assessed some years ago. If that were true, the School Corporation, as a major recipient of property tax revenues, would over time have to reimburse Inland for those previously-received revenues which were attributable to that over assessment.

In view of the short time frame available to balance the school budget and in view of the magnitude of the ever-increasing fiscal burden on Flores, Manous, and the Board, it is surprising that the School Corporation did not commit other violations of CEEBA in connection with its budget-cutting activity. Consider, for example, all the possibilities for error involved in the multi-faceted activities in which Manous had to engage to assure that the appropriate specialists were leaving, that the appropriate specialists were transferred involuntarily, and that the appropriate music teachers were rified. Similarly, consider the possibilities for error that existed in regard to the late-April exchanges between Candelaria and Manous about the impending rifs. Since both Candelaria and Manous used the term "rifs" to refer to true rifs, no job-loss rifs, termination non-renewals, perfunctory (no job-loss) non-renewals, and true cancellations of individual contracts, the potential for a misunderstanding between them was unusually high. In all likelihood, similar chances for School Corporation error existed in regard to every rif and every involuntary transfer made on other school programs.

Additionally, the same potential for School Corporation error had existed in regard to the cuts already made in the four personnel categories to which Manous alluded in mid-February.

Furthermore, considering how complex the non-renewing and rifting processes were, it is not surprising that Manous could have misled Candelaria (perhaps, even unintentionally) concerning whether Brinker's non-renewal occurred because she was a poor teacher (whom the school would never rehire) or because she was a specialist. Moreover, the evidence demonstrates that no one truly knows why the School Corporation failed to inform the Federation about the impending rifs of the three semi-permanent teachers. Lastly, no one truly knows why the School Corporation did not tell the Federation about the impending rifs of the three music teachers, in early April, when it was taking the necessary steps to effect the involuntary transfers of three specialists.

B.

In regard to the latter matter, two possibilities readily come to mind. First, since Manous told the specialists and Rodriguez about their probable elimination, he may have assumed that they then told the Federation. If so, he *improperly* further may have assumed that since the Federation knew about the potential rifs, the School Corporation no longer had a duty to initiate discussion. Second, considering the severity of the School Corporation's fiscal predicament, Manous *unjustifiably* may have thought that since only the "basic" offerings were going to be retained, the Federation would have anticipated that the specialists would be rified. Thus, he *incorrectly* may have concluded that since the Federation could have anticipated those three rifs, it later decided not to initiate discussion.

C.

Even if the School Corporation's misleading Candelaria in late April was not inadvertent, those two exchanges between the School Corporation and Candelaria occurred after the three rifs on April 12. With the exception of those two exchanges, this report contains no finding to the effect that the School Corporation intentionally participated in any illegal conduct. Thus, since the only intentional and potentially violative School Corporation conduct - - that is, the two exchanges in late April - - occurred in late April *after* the three rifs on April 12, the School Corporation's violation of CEEBA unquestionably was *inadvertent*. In other words, Manous's failure in late-April to tell Candelaria about the potential rifs of the music teachers constituted the only School Corporation conduct which may have been both intentional and violative of CEEBA.²³ Thus, the School Corporation's April 12 rifting of the music teachers without prior discussion was an unintentional violation of CEEBA.

However, the Indiana Supreme Court has held that unintentional school corporation conduct which violates CEEBA still constitutes an unfair practice. *See Evansville, supra*, 405 N.E.2d at 899. Consequently, even though the School Corporation's violation of CEEBA herein was unintentional, that particular conduct nevertheless constituted an unfair practice which was grievous.

23 For the sake of argument, assume Manous's failure to tell Candelaria about the impending dismissal letters violated CEEBA. Nevertheless, such violative action would be nothing more than another aspect of the same discussion unfair practice regarding the music teachers.

IV.

A.

It can be inferred that - - subsequent to the filing of the Complaint and subsequent to having reviewed thoroughly the sequence of events referred to in the Complaint - - Flores and Manous would have become aware that discussion (as they had practiced for many years) had not occurred in this case.²⁴ Nevertheless, for undisclosed reasons, the School Corporation's legal pleading denied the Federation's discussion allegation concerning the rifts of the music teachers. Within this particular factual situation, it is puzzling that the School Corporation chose to deny that particular allegation. Throughout Indiana, inadvertent discussion violations occur frequently. In most instances, the offending party merely concedes its error, promises not to do so again, and moves on.

B.

When evaluated within the context of the many statewide discussion violations which have occurred over the years, this was an *egregious* violation, even though it was inadvertent. In all likelihood, Flores and Manous would have realized that the School Corporation had denied the Federation the opportunity to exercise a *most precious right* under CEEBA. Through its

24 Subsequent to the initiation of this proceeding, one could ascertain what had occurred simply by obtaining Manous's thorough, straight-forward, and professional explanation concerning the precise sequence of events which preceded the School Corporation's April 12 decision to rift the three music teachers. Nevertheless, one must continuously scrutinize each detail comprising that explanation to appropriately evaluate its import regarding the outcome herein. For example, during the hearing, Manous was asked if: "... [he] raised the specter of the elimination of the specialists?" (emphasis added) From a cursory review of his response, one could conclude that he, indeed, had told the Federation in February, 2001, that the specialists would be eliminated.

However, a thorough and careful review of his reply to that inquiry, within the context of all of his testimony, shows that Manous unequivocally did not tell the Federation in February about the future, potential elimination of the specialists. In fact, Manous responded to that specific inquiry by stating that "in general" he told the Federation "about all of the possible cuts that [the superintendent and Board] were looking for." (emphasis added)

In particular, evidence, adduced by the School Corporation shows that in late March or early April a meeting was held between Flores and the Board wherein they initially decided to eliminate the specialists. Manous attended that meeting. Since the earliest the School Corporation's decision (to eliminate the specialists) could have been made was in late March, Manous could not have told the Federation about the fate of the specialists in February. Furthermore, he could not have otherwise told the Federation about the specialists' fate because discussion occurred only in February.

Thus, a complete analysis of the School Corporation's own explanation of the sequence of events categorically shows that it did not discuss the potential (or impending) rifts of the three music teachers with the Federation before it made its April 12 decision to terminate those teachers. In view of the incontrovertible evidence establishing that the School Corporation violated CEEBA and in view of Flores's demonstrated familiarity with and appreciation of the usefulness a cooperative discussion relationship to head off and resolve school problems and disputes, one might have reasonably expected the School Board to simply admit its inadvertent error, to apologize to the Federation, and to continue the positive discussion relationship which Flores described.

unwitting conduct, the School Corporation had denied the Federation the right to be afforded an opportunity to have meaningful input into a particular School Corporation budget-cutting decision. Specifically, the Federation was denied the right to present its position on those three potential rifts before the School Corporation made its decision to take such action. In East Chicago, CEEBA affords unusual protection to an individual teacher whose job is in jeopardy as a result of a reduction-in-force. Such a teacher may have her professional representative present to the school corporation the case for job retention *before* the School Board *formulates* why the job should be eliminated.

In other words, CEEBA guarantees the Federation no greater right than to forcefully advocate in favor of the retention of certain positions held by its bargaining unit members. Furthermore, CEEBA guarantees the Federation the right to do so at a time when the decision-maker is still amenable to thoughtfully considering the Federation's position before making its final decision.²⁵

V.

A.

The School Corporation's defense, as presented by its general counsel,²⁶ was premised on the fact that the School Corporation had talked a lot with some teachers (as contrasted to solely with Federation officials) about the rifts of the three music teachers after it had decided to terminate those three teachers. Then, the School Corporation observed that it had meticulously complied with certain state statutes pertaining to the termination of teachers as a result of a reduction-in-force. Specifically, those statutes prescribe the steps a school corporation must take to terminate effectively a first- or second-year teacher or a teacher with an indefinite contract.²⁷

Finally, the School Corporation concludes that its conduct complied with the applicable laws. That is so, the School Corporation reasons, because it met the legislative mandates in those particular statutes pertaining to teacher terminations and because it talked a lot (or communicated) with some teachers (including a few Federation officials). However, the School Corporation's defense must fail because it did not comply with *both* statutes which are applicable in this case: that is, the termination statutes²⁸ and CEEBA. Here, although the School

25 See Covington Community School Corporation, U-98-09-2440, 1999 IEERB Ann. Rep. 57, 77-78 (1999); see also, Union County School Corporation, *supra*, 471 N.E.2d at 1201.

26 The School Corporation's public school labor law specialist presented other aspects of the defense case: for example, the opening statement and technical argumentation that a computer lab course keyed to the Indiana state math standards could not constitute a change in curriculum.

27 Teachers with permanent or semi-permanent Regular Teachers Contracts.

28 Here, the School Corporation did meticulously comply with statutes other than CEEBA. However, those statutes address a completely different Legislative concern. Therefore, compliance with those statutes which essentially provide due process to teachers experiencing contract non-renewal or contract cancellation does not constitute compliance with CEEBA.

By definition those "due process" provisions provide *individual teachers* (as contrasted to the exclusive

Corporation fully complied with the termination statutes, it nevertheless violated Section 5(a)(5) of CEEBA, as interpreted by the Indiana Supreme Court in Evansville. Furthermore, the School Corporation's own presentation was not intended to show that it complied with CEEBA.²⁹

The transcript of the proceedings and the public case file are both silent as to why the School Corporation presented the defense case in that manner. Nevertheless, its defense was given with the utmost precision and with an unusual grasp of the day-to-day personnel activities of the school. That presentation tended to portray Flores and the Board in a positive light for two reasons. First, it established Flores and the Board intentionally did not commit the unfair practice. Second, it showed that Flores and the Board had made a significant public contribution by first trying to save the elementary music program, by later hearing out the terminated teachers, and by ultimately balancing the budget.

B.

On the other hand, those positive acts do not mitigate the adverse effect the deplorable unfair practice had on the Federation. Discussion herein would not have altered the specialists' fate. However, it would have reassured the Federation that the School Corporation dutifully would *recognize* the Federation's future right to discuss in circumstances wherein the exercise of that right might persuade the School Corporation to adopt the Federation's position.

VI.

Finally, one of the many papers filed in this case observed that the former constructive relationship had deteriorated as a result of the filing of the Complaint and the settlement negotiations. Therefore, before considering the recommended order, it may be helpful to quickly note several actions taken by each party which may have unnecessarily damaged the former positive discussion relationship.

On two occasions, the Federation needlessly provoked the School Corporation. The Complaint's two unessential discussion counts gave the impression of pointless Federation "piling on." Those two additional counts forced the School Corporation to waste its time and money defending against unworthy allegations. Second, in view of the School Corporation's desperate fiscal situation, the requested remedy of reinstatement would have caused unnecessary upset. Although such a request may have had merit - - if considered solely within the context of the unfair practice - - it, nevertheless, negatively would have affected any potential resolution of this case. In other words, considering that the School Corporation barely could keep the doors open, that requested remedy would have been offensive to those who had labored to maintain solely the basic elementary offerings.

teachers' organization) the opportunity to challenge their potential dismissals *after* the School Corporation has decided to consider terminating them. On the other hand, the purpose of discussion is to give the *exclusive teachers' organization* (as contrasted to an individual teacher) the opportunity to provide input into a School Corporation decision on an enumerated subject *before* such decision-making occurs.

29 The School Corporation's own presentation establishes that the parties did not discuss the elimination of the specialists at the mid-February discussion session. The parties did not meet for discussion on any other occasion.

Additionally, the Federation failed to explain to the School Corporation that some students of discussion have been watching for discussion cases, such as this one, wherein the facts might warrant an affirmative remedy in good times. *See Union County, supra*, 471 N.E.2d at 2000-01. The Federation should have explained clearly that its reinstatement request was theoretical in nature. To its credit, the Federation unhesitantly did so during the hearing.

Conversely, the School Corporation's tone-deaf response to the Federation's plea - - for the School Corporation to acknowledge its fundamental right to discuss teacher rifts - - needlessly provoked the *prosecution* of this proceeding. Since the specialists were going to be eliminated regardless of whether discussion occurred, apparently the School Corporation initially did not comprehend or care *why* the Federation became so exercised when discussion did not occur. Furthermore, even subsequent to the unproductive settlement negotiations, it is questionable whether the School Corporation fully comprehended why the Federation earlier had responded so negatively.

Historically, in East Chicago much of the Federation's strength has been derived from its ability to successfully engage in discussion on subjects of concern to its members. In some instances, depriving Candelaria, Mejia, and Quinn of the right to discuss may be a greater deprivation than refusing to bargain with them. In many ways, the School Corporation's lack of deference concerning the import of discussion was comparable to the Federation's insufficient appreciation of the incredible and unrecompensed effort the superintendent and Board made to balance the budget and to participate in the three termination hearings.

If each party can acknowledge that, in all likelihood, it *unknowingly* contributed to the acrimony surrounding this case, then perhaps they can begin anew. With the assistance of the four capable counsel, now is the time for the School Corporation and the Federation to demonstrate to the greater school community that positive labor relations will once again exist in East Chicago. Superintendent Flores' gratuitous testimony much more succinctly and adequately sums up what can be in East Chicago. He stated, in part:

[W]e've had an outstanding rapport It's ongoing We've put out a lot of fires *together*.

Tr. Vol II, p. 158, ll. 19-25. (emphasis added)

CONCLUSIONS OF LAW

1. The Indiana Education Employment Relations Board has jurisdiction over the parties and the subject matter of the controversy herein.
2. The Respondent School Corporation, by not talking with the Federation about the potential rifts of the three music teachers before it made its decision to terminate those three teachers, failed to discuss those rifts. Thus, the School Corporation committed an unfair practice in violation of Sections 7(a)(5) and 7(a)(6) of CEEBA.
3. From the facts set forth in both Counts II and III of the Complaint, the School Corporation could not have anticipated that it should have initiated discussion to prevent the later filing of an unfair practice Complaint. Therefore, those are not appropriate factual situations upon which to make determinations as to whether unfair practices were committed.

RECOMMENDED ORDER

1. Counts II and III of the Complaint are dismissed in their entirety.
2. The Respondent School is ordered to cease and desist, now and in the future, from failing to discuss potential rifts under Section 5(a)(5) of CEEBA.
3. The Respondent School Corporation is ordered to cease and desist, now and in the future, from engaging in any conduct which would violate CEEBA.

Pursuant to the Rules of the Indiana Education Employment Relations Board, and specifically Rule 560 IAC 2-3-21(a), this case is transferred to the Indiana Education Employment Relations Board.

To preserve an objection to the Hearing Examiner's Report, a party must object to the Report in a writing that identifies the basis of the objection with reasonable particularity. Such writing must be filed with the Indiana Education Employment Relations Board within fifteen (15) days after the Report is served on the petitioning party. *See* IC 4-21.5-3-29(c) and (d); 560 IAC 2-3-22 and 23.

Dated this 12th day of December, 2002.

Ivan Floyd
Hearing Examiner

ADDITIONAL FINDINGS AND CONCLUSIONS OF FACT

1. Manous testified at length about what the parties said to each other during the mid-February discussion session. On direct examination, counsel for the School Corporation asked Manous to list the staffing and program areas in which he told the Federation that he *thought* the School Corporation would make cuts. He enumerated the following areas: (1) not replacing retiring administrators; (2) cuts in non-certificated employee administrators; (3) cuts in teachers involved in teaming at the junior high schools; (4) cuts in school clerical staff; and (5) "take a look at others [that is, other areas], also." Manous's usage of the phrase in item 5 was an effort by him to refer the fact that the central administration still intended to call upon each building principal to identify for Flores and the Board other programs or staff in which cuts could be made. At the time of the February discussion session, that request had not been communicated yet to the building principals.
2. Initially, on direct examination, Manous failed to state that he had told the Federation in February that the elementary music program was one of many programs which the School Corporation still might possibly cut. In an effort to jog Manous's memory, counsel for the School Corporation asked him whether he had during the February discussion session:

raise[d] the specter of the *elimination* of the music specialists?

Manous responded:

In general terms when I discussed about all the *possible* cuts that [the School Corporation and Board] were looking at, that that was one of them, yes.

(emphasis added)

3. Manous was then asked what the teachers' response was to his statement that the elementary music program was one of the many school programs which still might *possibly* be cut. He replied:

If I remember right, they didn't think that [such an elimination] was a good idea and they were just kind of listening to what I was telling them. I told them that we did not want to cut [the music specialists], but that was part of the possible cuts that [Flores and the School Board] had discussed.

4. Manous next stated that prior to the February discussion session he had attended meetings with the superintendent and the Board wherein "the *possible* elimination of the music specialists was discussed." (emphasis added) That was precisely what Flores had told Candelaria in November or December, 2000: that is, the specialists were one of many programs that *possibly* could be cut later.
5. Manous later testified that he was present in late March or early April, 2001, when the superintendent and Board finally decided to cut the specialists.

6. On cross examination, counsel for the Federation first asked Manous about his earlier testimony concerning what he had told the Federation at the February discussion session. Specifically, counsel asked Manous if he had, indeed, told the Federation about the four potential cuts that had been enumerated earlier. Counsel and Manous independently examined each of those items and concluded that each had been mentioned at that February discussion session.
7. Counsel then asked Manous what he had meant when he had stated earlier that he had also told the Federation at the discussion session that the School Corporation would "take a look at others [that is, other areas], also." His answer to this particular question was that when he earlier had used the phrase during the hearing, he was referring to the fact that Flores and other central office administrators subsequently intended to ask each building principal to identify additional cuts that could be made in their building budgets.
8. Thus, for the second time, when asked to list specifically the areas in which he, in February, had thought the School Corporation would make cuts, he did not list the elementary music program. Such testimony is consistent with his other testimony to the effect that he told the Federation in February that the specialists were one of the many programs which the School Corporation *possibly* might still cut.
9. On redirect examination, when again prompted by counsel for the School Corporation, Manous stated for the second time that in February he had told the Federation: ". . . that [the elementary] music specialists were a *possibility* of being cut." (emphasis added)

**BEFORE THE INDIANA EDUCATION
EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF:

NORWELL CLASSROOM TEACHERS)	
ASSOCIATION, et al)	
)	
Complainants,)	
)	
and	)	CASE NO. U-01-06-8435
)	
NORTHERN WELLS COMMUNITY)	
SCHOOLS, et al)	
)	
Respondents.)	

HEARING EXAMINER'S REPORT

Pursuant to the pleadings in the above-captioned case, upon the basis of the evidence adduced at the hearing in this matter on August 13, 2001, and upon evaluation of the credibility of the witnesses, consideration of the post-hearing papers submitted by the parties, and the applicable law, the Hearing Examiner now makes the following:

FINDINGS AND CONCLUSIONS OF FACT

1. Complainant, Kathleen Garrett, who signed the complaint for unfair practice herein under oath, at all times material, was a "school employee" of the Northern Wells Community Schools ["Corporation"] as defined by §2(e) of I.C. 20-7.5-1, Public Law 217-1973 [Act"] and a "nonpermanent teacher" as defined by I.C. 20-6.1-4-14, Public Law 100-1976 ["Tenure Act"] at Lancaster Center (Elementary) School.
2. Complainant Norwell Classroom Teachers Association ["Association"], at all times material, was a "school employee organization" as that term is defined by §2(k) of the Act and was the "exclusive representative" of the school employees of the Corporation as that term is defined by §2(l) of the Act.
3. The Respondent, Northern Wells Community Schools, at all times material, was a "school employer" as that term is defined in §2(c) of the Act.
4. At the time the complaint was filed, Bruce Ballinger was a "school employee" of the Corporation as defined by §2(e) of the Act and the president of the Association. At the time the dispute first arose, James Cobble was a "school employee" as defined by §2(e) of the Act and the Association president.
5. John "Jack" Groch ["UniServ Director" or "Groch"], at all times material to the issues in the complaint, was the Indiana State Teachers Association UniServ Director.

6. At all times material, Joan L. Whicker ["Whicker"] was a "school employee" of the Corporation as defined by §2(e) of the Act and the Association's building representative for Lancaster Central School.
7. At all times material, Michael Salisbery ["Superintendent"] was the Corporation's "superintendent" as that term is defined in §2(d) of the Act.
8. At all times material, Tamara Needler ["Principal"] was the principal of Lancaster Central (Elementary) School and a "supervisor" as that term is defined in §2(h) of the Act.
9. At all times material, Michael Krinn was a member of the "governing body" ["School Board"] as that term is defined in §2(b) of the Act and a "school employer" as that term is defined by §2(c) of the Act.
10. Garrett was hired under a temporary contract as an elementary school counselor at Lancaster Central for the 1999-2000 school year. During that school year, Garrett's performance was not evaluated.
11. Tamara Needler ["Principal"] became the principal of Lancaster Central for the 2000-2001 school year.
12. The Principal evaluated Garrett's performance for the first semester of the 2000-2001 school year.
13. The Principal met with Garrett regarding the evaluation on March 9, 2001.
14. Prior to the evaluation meeting, the Principal told Garrett that she might want a representative present at the meeting.
15. At the meeting, the Principal identified several areas of concern. The Principal advised Garrett that she would be looking at those areas of concern at contract renewal in the spring of 2001.
16. The Association's building representative Joan L. Whicker attended the evaluation meeting with Garrett.
17. Another meeting took place on March 16, 2001, when Garrett presented her rebuttal to the Principal's evaluation. Whicker also attended that meeting with Garrett as her Association representative.
18. On March 19, 2001, the Principal met with Garrett and Whicker and informed them that she would be recommending that Garrett's contract not be renewed for the following school year.

19. The School Board met on March 20, 2001. At the public meeting, the Superintendent recommended that the School Board authorize him to notify nonpermanent teachers, in writing, as necessary, that their contracts would not be renewed for the next school year. The School Board authorized notification. During the School Board's executive session, the Superintendent informed the members that he was recommending nonrenewal of Garrett's contract.
20. Association President Cobble met with the Superintendent on March 21, 2001 regarding Garrett's nonrenewal. Probation as an alternative to nonrenewal was discussed.
21. On March 22, 2001, the Superintendent faxed Cobble a final draft of proposed probation terms for Garrett. After reading the document, Cobble informed the Superintendent that he did not believe Garrett would accept probation.
22. On the evening of March 22, 2001, UniServ Director Jack Groch called the school and asked for Garrett. Since the office personnel had left for the day, the Principal took the call and paged Garrett. When Garrett did not answer her page, the Principal informed Groch that Garrett had left for the day. At that time, he introduced himself as Jack Groch and that he was representing Garrett. He told the Principal he wanted to schedule a meeting to discuss a grievance. The Principal informed the UniServ Director that she had 7:30 a.m. and 9:30 a.m. available for a meeting on March 23, 2001. The UniServ Director selected 9:30 a.m.
23. According to the parties' collective bargaining agreement, Step 1 of the grievance procedure states:

Within fifteen (15) working days of the time that the grievant knew, or reasonably should have known, of the grievance, the grievant shall present the grievance to the building principal during non-teaching hours. Within three (3) working days after presentation of the grievance, the building principal shall orally answer the grievant.
24. The UniServ Director arrived at approximately 9:20 a.m. on March 23, 2001, and the Principal invited him into her office where the Superintendent was also in attendance. At that time, the Principal informed the UniServ Director that no meeting would occur during teaching hours, that the meeting must be held outside of teaching hours in accordance with the collective bargaining agreement. The meeting was rescheduled, and the UniServ Director left the school at approximately 9:40 a.m.
25. After the UniServ Director left on the morning of March 23, 2001, the Superintendent directed the Principal to schedule a meeting with Garrett and Whicker.
26. The Principal scheduled the meeting with Garrett and Whicker for 12:20 p.m. on March 23, 2001.
27. After being notified of the meeting by the Principal, Garrett called the UniServ Director and notified him of the meeting.

28. The UniServ Director came to the school and attended the meeting at 12:20 p.m. on March 23, 2001 as the Association representative for Garrett.
29. The meeting at 12:20 p.m. on March 23, 2001 was attended by the Superintendent, the Principal, Garrett, Whicker and the UniServ Director.
30. At the meeting, the Superintendent presented a document to Garrett entitled "Alternative to Nonrenewal" which contained terms for probationary employment of Garrett. The "Alternative to Nonrenewal" contained in part a job description for Garrett's position. The job description had not been presented to the Association for formal discussion prior to the meeting of March 23, 2001.
31. Garrett and the UniServ Director informed the Superintendent that Garrett would not accept the probationary terms contained in the "Alternative to Nonrenewal."
32. After Garrett refused to accept the probationary terms offered, the Superintendent handed Garrett a document entitled "Memorandum of Nonrenewal" which notified Garrett that the Corporation would not renew her teaching contract for the following school year.

ISSUES

1. Did the Corporation commit an unfair practice by postponing a grievance meeting with the Association's UniServ Director regarding Kathleen Garrett at 9:30 a.m. on March 23, 2001?
2. Did the Corporation commit an unfair practice after postponing the grievance meeting by requesting that the Association's building representative Joan L. Whicker attend a meeting regarding probationary employment or the nonrenewal of Kathleen Garrett at 12:20 p.m. later the same day on March 23, 2001?
3. Did the Corporation commit an unfair practice by offering an "Alternative to Nonrenewal" to Kathleen Garrett at the meeting on March 23, 2001, which contained a job description that had not been previously discussed with the Association?
4. Did the Corporation commit an unfair practice by issuing notice to Garrett of the nonrenewal of her contract at the meeting of March 23, 2001 immediately after she rejected the Corporation's proposed "Alternative to Renewal?"

DISCUSSION

The Complainants allege that each of four separate acts constitutes an unfair practice by the Corporation which had the effect of interfering with, restraining or coercing employees in the exercise of rights guaranteed under the Act. Consequently, each act of the employer alleged to be unfair shall be separately examined.

Section 7(a)(1) of the Act provides that it shall be an unfair practice for a school employer to "interfere with, restrain or coerce school employees in the exercise of the rights guaranteed in Section 6 of this chapter." The rights guaranteed in Section 6 are stated as follows:

School employees shall have the right to form, join, or assist employee organizations, to participate in collective bargaining with school employers through representatives of their own choosing, and to engage in other activities, individually or in concert for the purpose of establishing, maintaining, or improving salaries, wages, hours, salary and wage related fringe benefits, and other matters as defined in Section 4 and 5 of this chapter.

The Indiana Education Employment Relations Board ("IEERB") applies an objective standard in cases involving interference, restraint, or coercion. Adopting the approach of the United States Court of Appeals in *NLRB v. Illinois Tool Works*, 153 F.2d 811, 17 LRRM 841, 843 (7th Cir. 1946), the IEERB has held:

[T]he test of interference, restraint, or coercion under Section 8(a)(1) of the Act [NLRA] does not turn on an employer's motive or on whether the coercion succeeded or failed. The test is whether the employer engaged in conduct which, it may be reasonably said, tends to interfere with the free exercise of employee rights under the Act.

South Bend Community School Corporation, U-97-02-7205, citing; Westfield Washington School Corporation, U-92-12-3030, 1992 IEERB Ann. Rep. 122, 132-133 (1992); MSD of Pike Township, U-92-01-5350, 1992 IEERB Ann. Rep. 94, 108-109 (1992); Monroe Central School Corporation, U-90-22-6820, 1991 IEERB Ann. Rep. 222, 234-235 (1991). Moreover, there should be a direct nexus between the conduct complained of and the statutory right being exercised by the employee. Board of School Trustees of Union Township, U-86-20-6530.

Consequently, the inquiry with regard to each of the four charges raised by the Complaint herein must focus on whether the weight of the evidence in this case indicates conduct on the part of the school employer that it can reasonably be said tends to interfere with the free exercise of those employee rights stated in Section 6(a) of the Act.

I

The Association first contends that the Corporation's refusal to convene a step 1 grievance meeting at 9:30 a.m., on March 23, 2001, on behalf of Kathleen Garrett was an illegal attempt to "interfere with and restrain" Garrett in the exercise of her statutory rights.

The evidence is not in dispute that the Principal did in fact schedule a meeting with Jack Groch the UniServ Director for that date and time. The Principal and Groch disagree as to whether there was an understanding between them as to the purpose of the meeting. Without resolving that factual issue, however, it is further not in dispute that the relevant provisions of the collective bargaining agreement provide that the Corporation may require that such hearings be held outside school hours. Consequently, it is difficult to conclude that the Corporation interfered with the exercise of employee rights under the Act by insisting on compliance with a provision of a duly bargained grievance procedure on the scheduling of grievance meetings. Even if the Principal was aware that Groch was there for a Step 1 grievance meeting, and simply decided to postpone the meeting because she had the right to do so under the collective bargaining agreement, it cannot be reasonably said that the postponement tended to interfere with the free exercise of employee rights under the Act.

The record contains no evidence that the Corporation refused to schedule a meeting at all with respect to Garrett's grievance. In fact, the meeting was rescheduled at the time of the postponement. The Association presented no evidence that the rescheduling of this meeting prejudiced Garrett in any way or compromised her right to file and pursue her grievance. The Hearing Examiner concludes that no unfair practice was committed by the rescheduling of Garrett's grievance meeting.

II

The Complainants secondly assert that by scheduling a meeting later that same day at 12:20 p.m. on March 23, 2001 with Kathleen Garrett and the Association's building representative Joan L. Whicker was "an attempt to interfere with and restrain Kathleen Garrett in the exercise of her right to a representative of her own choosing."

The specific right interfered with here according to the Complainants is Garrett's "right to a representative of her own choosing." The Complainants argue that Section 6 of the Act affords employees a right to select a particular person to represent him or her in meetings with the employer. Complainants further suggest that employees have a right to make this selection each time the employee attends a meeting with the employer. However, an employee's statutory right to choose a representative has to do with a bargaining unit's selection of an exclusive representative, such as the Association, who represents all members of the bargaining unit. Therefore, any attempt by the employer to exclude Groch from the 12:20 meeting did not interfere with Kathleen Garrett's statutory rights since she has no statutory right under the Act to select which of the Association's representatives (the Association's building representative or the UniServ Director) would accompany her to the meeting.

The Complainants claim further that interference occurred with respect to certain rights defined within the United States Supreme Court decision of NLRB v. Weingarten, Inc., 420 U.S.

251 (1975). That case held that an employer who denies an employee the opportunity to have her union representative present at a disciplinary meeting commits an unfair labor practice. Even though the Weingarten case was applying the provisions of the National Labor Relations Act, Complainants point out that IEERB decisions have applied the analysis to school employees under Public Law 217. Assuming for the sake of argument that school employees are entitled to the rights described in Weingarten, the facts in this case do not indicate that those rights were denied to Kathleen Garrett. Ms. Garrett was notified of the 12:20 meeting. She contacted the UniServ Director, who was apparently the union representative of her choice, and the UniServ Director accompanied her to the meeting. The fact that the school employer notified the Association's building representative of the meeting rather than the UniServ Director did not interfere with any rights Ms. Garrett may have under Section 6 of the Act or pursuant to the Weingarten decision cited by Complainants.

III

The Complainants further allege that the Corporation's offer of probationary employment to Ms. Garrett as an "Alternative to Nonrenewal," which contained a job description not previously implemented or discussed with the Association was an unfair practice. The apparent reasoning is that the Corporation had a statutory duty to discuss the job description prior to implementing it as part of probationary terms offered to Garrett. The Corporation, in denying that such conduct was an unfair practice, has cited as support for its position, and the Association has attempted to distinguish, the cases of Carroll Consolidated School Corporation, 439 N.E.2d 737 (Ind. App. 1982) and Delphi Community School Corporation, 368 N.E.2d 1163 (Ind. App. 1977). Those cases stand for the proposition that a school corporation has no obligation under I.C. 20-7.5-1-5 (Section 5 of the Act) to discuss subjects that involve or affect only a single teacher. The reasoning behind those cases is that such conduct is not concerted activity for the benefit of all members of the bargaining unit or the labor organization as a whole.

The Hearing Examiner finds the holdings of Carroll and Delphi applicable to this issue. Indeed, the "job description" presented to Ms. Garrett as part of probationary terms being offered affected only one teacher and did not amount to a unilateral implementation of a job description for others in the bargaining unit. The holdings of Carroll and Delphi established that the scope of the Section 5 discussion obligation does not extend to these facts.

IV

The Fourth Count of the Complaint charges that the school employer committed an unfair practice by issuing notice to Ms. Garrett of the nonrenewal of her contract immediately after she rejected the "Alternative to Nonrenewal." Again the evidence produced at hearing does not indicate that this conduct by the school employer interfered or coerced any school employee in the exercise of statutory rights. Since no statutory right was compromised by the act of notifying Garrett of the nonrenewal of her contract, no unfair practice was committed when the school employer issued that notice to her.

CONCLUSIONS OF LAW

1. The Indiana Education Employment Relations Board has jurisdiction over the parties and the subject matters in dispute.
2. The Respondent School Corporation did not commit an unfair practice when it postponed a grievance meeting to a time outside of school hours as provided in the collective bargaining agreement.
3. The Respondent School Corporation did not commit an unfair practice when it invited the Association's building representative to attend a meeting regarding Kathleen Garrett's employment, rather than the Association's UniServ Director.
4. The Respondent School Corporation did not commit an unfair practice when it offered probationary employment terms to Kathleen Garrett that contained a job description that had not been previously discussed with the Association.
5. The Respondent School Corporation did not commit an unfair practice by notifying Kathleen Garrett that her contract would not be renewed after Kathleen Garrett refused an offer of probationary employment.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Complaint for Unfair Labor Practice be dismissed in its entirety with prejudice.

Pursuant to 560 IAC 2-3-21(a), this case is transferred to the Indiana Education Employment Relations Board.

Dated 7th of November , 2002.

Roger P. Ralph
Hearing Examiner

2000 UNFAIR PRACTICE COMPLAINTS

	SCHOOL CORPORATION	CASE NUMBER	COUNTY	DISPOSITION
1.	Boone Township	U-00-13-6460	Porter	Dismissed
2.	Crown Point	U-00-08-4660	Lake	Dismissed
3.	Eastern Greene	U-00-12-2940	Greene	Dismissed
4.	Goshen	U-00-03-2315	Elkhart	Decision
5.	Greensburg	U-00-10-1730	Decatur	Dismissed
6.	Knox	U-00-09-7525	Starke	Dismissed
7.	North Lawrence	U-00-11-5075	Lawrence	Dismissed
8.	Northern Tipton	U-00-01-7935	Tipton	Dismissed

**BEFORE THE INDIANA EDUCATION
EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF:

GOSHEN EDUCATION ASSOCIATION,)	
<i>et al.</i> ,)	
)	
Complainants,)	
)	
and	)	Case No. U-00-03-2315
)	
BOARD OF SCHOOL TRUSTEES OF THE)	
GOSHEN COMMUNITY SCHOOLS,)	
)	
Respondent.)	

BOARD ORDER

On September 7, 2001, the Respondent stated its intent to administratively appeal the Hearing Examiner's Report in the above-captioned case to the Indiana Education Employment Relations Board ("Board"). In pursuing that appeal, the Respondent filed its Exceptions to the Hearing Examiner's Report, accompanied by its Brief in Support, on December 4, 2001. Thereafter, the Complainants' filed their Brief in Opposition to the Exceptions on February 8, 2002. On February 26, 2002, the Board heard the parties' oral arguments.

After having considered the Hearing Examiner's Report, the Respondent's Exceptions thereto and its Brief in Support, the Complainants' Brief in Opposition to the Exceptions, and the oral arguments of the parties, the Board members discussed the case among themselves. Ultimately, Member Wendling made a motion concerning the Board's final determination in this case. Member Lillich seconded that motion, which urged the Board:

- I. To adopt the Hearing Examiner's Recommended Order numbered one, which ordered the School Corporation to cease and desist from refusing to bargain by taking unilateral action regarding the use of reinsurance reimbursements.
- II. To adopt the Hearing Examiner's Recommended Order numbered two, which ordered the Respondent to rescind its action of using the reinsurance reimbursements to make three routine monthly premium payments.
- III. To AMEND the Hearing Examiner's Recommended Order numbered three as stated below.

IV.

- A. The Hearing Examiner's Recommended Order numbered three is AMENDED as follows:

The final sentence in that Recommended Order numbered three is AMENDED by deleting the words "exclusively all teachers" and inserting in lieu thereof the words "all employees."
 - B. Specifically, that above-mentioned sentence, AS AMENDED, now reads as follows:

The money should be paid to the ISTA Insurance Trust in a manner which will benefit ~~exclusively all teachers~~ **all employees** as they make their contributions to the ISTA Insurance Trust. (Board deletions: ~~exclusively all teachers~~; Board additions: **all employees**.)
 - C. Subsequent to the above-stated AMENDMENT, the Hearing Examiner's Recommended Order numbered three in its totality now reads as follows:

To reasonably restore the status quo ante, the School Corporation is ordered to pay an amount of money equal to the amount of the three missed monthly premium payments plus interest. The evidence shows that the three missed payments were equal to approximately \$450,000. The money should be paid to the ISTA Insurance Trust in a manner which will benefit all employees as they make their contributions to the ISTA Insurance Trust.
- V. To adopt the Hearing Examiner's Recommended Order numbered three, AS AMENDED, which is set forth in item III, C above.

The Board adopted Member Wendling's motion in a 3 to 0 vote. Implicit in Member Wendling's motion was the proposition that the Board was adopting the Hearing Examiner's Findings and Conclusions of Fact and his Conclusions of Law in their entirety.

Dated this 4th day of March, 2002.

Dennis P. Neary, Chairman

John E. Lillich, Member

William E. Wendling, Jr., Member

**BEFORE THE INDIANA EDUCATION
EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF:

SOUTH NEWTON CLASSROOM)	
TEACHERS ASSOCIATION,)	
)	
Complainant,)	
)	
and	)	Case No. U-99-14-5995
)	
SOUTH NEWTON SCHOOL)	
CORPORATION BOARD OF SCHOOL)	
TRUSTEES,)	
)	
Respondent.)	

ORDER OVERRULING RESPONDENT'S MOTION TO DISMISS OR,
IN THE ALTERNATIVE, SUBSTITUTE THE REAL PARTY IN INTEREST

On May 1, 2002, the Respondent filed its "Motion to Dismiss or, in the Alternative, Substitute the Real Party in Interest." The motion has now been fully briefed by the parties.

The Complainant became the exclusive representative of the teachers in Respondent's corporation in April, 1999. In May, 1999, in its capacity as such exclusive representative, the Complainant filed this unfair practice case. In the course of time, the Complainant presented this case to the Indiana Education Employment Relations Board ("IEERB"), to a trial court, to the Indiana Court of Appeals, where it prevailed, and to the Indiana Supreme Court, which denied transfer. The case was returned to the IEERB on February 21, 2002. On February 25, 2002, the Complainant was replaced as exclusive representative by the South Newton Faculty Organization ("SNFO"), pursuant to a representation election. At no time has the SNFO petitioned to intervene herein.

As was the case in Fratu v. Marion Community Schools Board, 749 N.E.2d 40, 44-45, it is appropriate to look to federal labor case law for guidance when, as here, a labor law question arising under an Indiana statute [Indiana Code Section 20-7.5-1 et seq.] is being considered for the first time. In UAW v. Telex Computer Products, 816 F.2d 519, 125 LRRM 2163 (10th Cir. 1987), the court held that the decertification of a union did not deprive the union of its standing to pursue a grievance. It was stressed that the union had a prima facie right to proceed, "absent a showing that some other organization can and will (knowledgeably and efficiently see the case to completion.)" 125 LRRM at 2166. And in Small v. Frank, 151 LRRM 2623 (E.D. Pa. 1996), a defeated union was allowed to pursue claims which arose during its period of representation because its successor refused to do so.

Because the unfair practice claim herein arose during the Complainant's period of exclusive representation, because the Complainant has prosecuted this case for more than three

years through various forums, and because the successor representative has not indicated any willingness or ability to continue the effective presentation of this case, the Hearing Examiner, persuaded by UAW v. Telex Computer Products, *supra*, and Small v. Frank, *supra*, hereby OVERRULES the Respondent's aforesaid motion.

A second pre-hearing conference in this case is hereby SCHEDULED for Monday, June 24, 2002, at 10:00 A.M. (E.S.T.), by telephone conference call initiated by the Hearing Examiner. If either attorney cannot be available at that time, he may reschedule the conference by contacting the Case Administrator.

Dated this 10th day of June, 2002.

Joseph A. Ransel, Jr.
Hearing Examiner

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CUMULATIVE INDEX TO
UNIT DETERMINATION AND REPRESENTATION CASES***

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* IEERB acknowledgement of an agreed composition of a unit.

** IEERB acknowledgement of a voluntary recognition of an exclusive representative.

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**2002 SUPPLEMENT TO
IEERB UNFAIR PRACTICE CASE HISTORIES**

All IEERB unfair practice cases which have appeared in the Annual Reports.
This also includes citations to appellate court cases

UNFAIR PRACTICE CASE	ANNUAL REPORT	PAGE (Forum)
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Marion, U-99-01, 02-2865	749 NE2d	40 (Ind.)
South Newton, U-99-14-5995	762 NE2d	115 (Ind. App.)

OTHER APPELLATE CASES

In addition to the representation, unit determination, and unfair practice cases shown in the IEERB Case Histories, the following appellate cases have interpreted or are related to the Certificated Educational Employee Bargaining Act (Indiana Code 20-7.5-1):

Anderson, 416 N.E.2d 327 (Ind. App.1981).

Beeching v. Levee, 764 N.E. 2d 669 (Ind. App. 2002).

Blackford Co., F-84-03-0515, 519 N.E.2d 169 (Ind. App. 1988).*

Blackford Co., 531 N.E.2d 1182 (Ind. App. 1988).

Caston, 688 N.E.2d 1315 (Ind. App. 1997).

Crawford County, 734 N.E.2d 685 (Ind. App. 2000).

DeKalb Co. Eastern, 513 N.E.2d 189 (Ind. App. 1987).

East Allen, 683 N.E.2d 1355 (Ind. App. 1997).

East Chicago, 422 N.E.2d 656 (Ind. App. 1981).

East Chicago, 622 N.E.2d 166 (Ind. App. 1993).

Eastbrook, 566 N.E.2d 63 (Ind. App. 1990).

Eastbrook v. ISTA, 749 N.E. 2d 1220 (Ind. App. 2001).

Fort Wayne, 443 N.E.2d 364 (Ind. App. 1982).

Fort Wayne, 527 N.E.2d 201 (Ind. App. 1988).

Fort Wayne, 569 N.E.2d 672 (Ind. App. 1991).

Fort Wayne, 585 N.E.2d 6 (Ind. App. 1992).

Fort Wayne, 977 F.2d 358 (7th Cir. 1992).

Fratus v. Marion Comm. Schools, 749 N. E. 2d 40 (Ind. 2001).

Gary, 332 N.E.2d 256 (Ind. App. 1975).

Gary, 512 N.E.2d 205 (Ind. App. 1987).

Hamilton Heights, 560 N.E.2d 102 (Ind. App. 1990).

Indianapolis, 585 N.E.2d 666 (Ind. App. 1992).

Indianapolis, 679 N.E.2d 933 (Ind. App. 1988).

Jay, 527 N.E.2d 715 (Ind. App. 1988).

John Glenn, 656 N.E.2d 864 (Ind. App. 1995).

Linton-Stockton, 686 N.E.2d 143 (Ind. App. 1997).

McMichael v. Scott County School District, 784 N. E. 2d 1067 (Ind. App. 2003).

Madison-Grant, 675 N.E.2d 734 (Ind. App. 1997).

Marion, 721 N.E.2d 280 (Ind. App. 1999).

Michigan City, 577 N.E.2d 1004 (Ind. App. 1991).

Monroe Co., 434 N.E.2d 93 (Ind. App. 1982).

Monroe Co., 489 N.E.2d 533 (Ind. App. 1986).

Mt. Pleasant, 677 N.E.2d 540 (Ind. App. 1997).

New Albany-Floyd Co., 724 N.E.2d 251 (Ind. App. 2000).

New Prairie, 460 N.E.2d 149 (Ind. App. 1983).

New Prairie, 487 N.E.2d 1324 (Ind. App. 1986).

North Miami, F-84-17-5620, 500 N.E.2d 1288 (Ind. App. Memo. Dec. 1986).*

North Miami, 736 N.E.2d 749 (Ind. App. 2000).

North Miami, 746 N.E.2d 380 (Ind. App. 2001)

Perry Twp., 459 U.S. 37 (U.S. Sup. Ct. 1983).

Portage Twp., 567 N.E. 2d 851 (Ind. App. 1991).

Prairie Heights, 585 N.E.2d 289 (Ind. App. 1992).

Rockville, 659 N.E.2d 174 (Ind. App. 1995).

South Bend, 444 N.E.2d 348 (Ind. App. 1983).

South Bend, 531 N.E.2d 1178 (Ind. App. 1988).

South Bend, 655 N.E.2d 516 (Ind. App. 1995).

South Bend, 657 N.E.2d 1236 (Ind. App. 1995).

South Newton, 762 N. E. 2d 115 (Ind. App. 2002).

Tippecanoe, 429 N.E.2d 967 (Ind. App. 1981).

West Noble, 398 N.E.2d 1372 (Ind. App. 1980).

Whitley Co., 718 N.E.2d 1181 (Ind. App. 1999).

*Cases in which the IEERB was a party.

INTEREST-BASED COLLECTIVE BARGAINING

The Indiana Education Employment Relations Board [“IEERB”] ventured into interest-based bargaining training approximately five years ago at the joint request of a school employee organization and the school employer. After consulting with the Federal Mediation and Conciliation Service [“FMCS”], we outlined and executed our first training program. Since that time we have held training sessions at Fayette County (Connersville), Gary, Garrett-Keyser-Butler, DeKalb Central, and DeKalb Eastern.

Interest-based bargaining, referred to as IBB, has been a successful alternative to traditional bargaining in the private sector for several years and in the public sector for the past few years. IBB is also known as “win-win” bargaining, collaborative bargaining, or consensus bargaining. IBB is the brain child of Dr. Jerome T. Barrett and a favorite child of the FMCS.¹ IBB embraces the P.A.S.T. model for win-win bargaining. P.A.S.T. is an acronym for Principles, Assumptions, Steps, and Techniques.

Principles

- Focus on **issues**, not on personalities.
- Focus on **interests**, not on **positions**.
- Seek mutual gain.
- Use a fair method to determine outcome.

Assumptions

- Bargaining enhances the parties’ relationship.
- Both parties can win in bargaining.
- Parties should help each other win.
- Open and frank discussion and information sharing expands the areas of mutual **interests**, and this in turn expands the **options** available to the parties.
- Mutually developed **standards** for evaluating **options** can move decision making away from reliance on power.

Steps

- Pre-Bargaining Steps:
 - Prepare for bargaining.
 - Develop opening statements.
- Bargaining Steps:
 - Agree on a list of **issues**.
 - Identify **interests** on one **issue**.
 - Develop **options** on one **issue**.
 - Create acceptable **standards**.
 - Test **options** with **standards** to achieve a **solution** or **settlement**.

1 Dr. Barrett has worked for the National Labor Relations Board, the U. S. Department of Labor, and the American Arbitration Association. In 1989 he developed the P.A.S.T. model of win-win bargaining and a training program to help labor and management negotiators use the model. He has trained several FMCS mediators and others on how to conduct that training and facilitate interest-based negotiations.

Techniques

- Idea Charting
- Brainstorming
- Consensus Decision Making

Prior to any IBB training, IEERB representatives meet with the parties to determine interest and commitment. Preferably, the meeting occurs in an informal setting such as a restaurant for lunch or after school snack. If the parties wish to pursue IBB training, they must set aside the equivalent of two (2) days. The only expenditures are those of facility, food, drink, and a few supplies. The agenda includes instruction in active listening skills, videos, communication exercises, traditional versus non-traditional bargaining styles, P.A.S.T. bargaining steps with exercises, consensus building and brainstorming exercises, and a simulation exercise utilizing the IBB approach to bargaining.

The IEERB emphasizes that IBB negotiations are not intended to replace traditional bargaining. Instead, IBB is an alternative approach to traditional collective bargaining. The IEERB recognizes that many school employee organizations and school employers are already using parts of IBB. In fact, many of the IBB techniques can be applied to traditional bargaining, other types of negotiations, and group decision-making endeavors. IBB is another service the IEERB provides to schools and their school employees to promote harmony in the collective bargaining process.